NOMINATION OF THURGOOD MARSHALL

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

EIGHTY-SEVENTH CONGRESS

SECOND SESSION

ON

NOMINATION OF THURGOOD MARSHALL, OF NEW YORK, TO BE UNITED STATES CIRCUIT JUDGE FOR THE SECOND CIRCUIT

MAY 1; JULY 12; AUGUST 8, 17, 20 and 24, 1962

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NOMINATION OF THURGOOD MARSHALL

TUESDAY, MAY 1, 1962

U.S. SENATE,
SUBCOMMITTEE ON NOMINATIONS OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee (composed of Senators Johnston, McClellan, and Hruska) met, pursuant to call, at 10:45 a.m. in room 2228, New Senate Office Building, Senator Roman L. Hruska presiding.

Present: Senator Hruska (presiding).

Also present: Joseph A. Davis, chief clerk.

Senator HRUSKA. The subcommittee will come to order.

The acting chairman would like to say that Senator Johnston's train has been delayed. It is supposed to come in at 11 o'clock. Senator McClellan, the third member of the subcommittee, is attending a markup meeting of the Appropriations Committee, and will not be able to be here this morning because of that conflict.

The acting chairman would like to say that this hearing this morning has been scheduled for the purpose of considering the nomination of Thurgood Marshall, of New York, to be U.S. circuit judge, second circuit. Notice of this hearing was published in the Congressional Record on April 19. Senator Javits and Senator Keating, both of New York, approved the nomination.

By letter of April 10, 1962, the Standing Committee on the Federal Judiciary of the American Bar Association stated that its members are unanimously of the view that the nominee is well qualified for the appointment.

We are privileged to have this morning the personal presence of both Senators from New York. I should like to call on the senior Senator from that State at this time, Senator Javits, to make such statement as he wishes.

STATEMENT OF HON. JACOB K. JAVITS, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator JAVITS. Thank you, Mr. Chairman. Mr. Chairman, first I would like to introduce to the subcommittee Judge Thurgood Marshall of the Second Circuit Court of Appeals. Judge Marshall is serving on the bench by recess appointment made October 5, 1961, and his confirmation, of course, is before the Senate.

Mr. Chairman, I could perhaps best state my own views about Judge Marshall, whom I have known for upward of 20 years personally, as a practicing lawyer in New York: that is I have been practicing there, and Judge Marshall, since 1936, has been engaged in

various appellate and other proceedings in New York, essentially before our Federal courts. And I have known him well, both by reputation and professionally and personally.

I would like to take the text of my brief remarks from the statement made by the president of our New York State Bar Association, Cloyd Laporte, at the time of the swearing in of Judge Marshall to the bench on October 23, 1961, proceedings which I had the honor to attend, and which Mr. Laporte, who is one of our most distinguished New York lawyers said:

> We found Mr. Marshall well qualified, which is a high rating in our book, and reserved for only a few.

Mr. Chairman, Thurgood Marshall deserves the confirmation of the Senate because he is one of the few in terms of the profession. And he also deserves, Mr. Chairman, the prompt confirmation of the Senate, because I think his role and his record are so distinguished, both as a citizen and as a lawyer, as to deserve that kind of prompt confirmation which the Senate gives to its most distinguished Americans.

The other point I would like to make is to Judge Marshall's biography, which will be before you, and the knowledge that he has been connected with some of the most celebrated cases decided by our courts—cases very largely dealing with constitutional questions—the chairman is very well familiar, I am sure, with Brown against the Board of Education, in which he was principal counsel, and with other cases establishing constitutional rights in respect of voting in primaries, the so-called *Texas Primary* case, and the case outlawing restrictive covenants based upon race, and many other cases.

His biographical sketch shows 32 appearances before the U.S. Supreme Court, and a winning record of 29 of those cases, with a loss of 3. And it is that, Mr. Chairman, that I would like to emphasize in my recommendation of Judge Marshall to the committee.

I, too, have been a practicing lawyer in New York, and have practiced before all our courts, in an active trial capacity as well as in arguments on appeal. I have also seen the difference between judges who have had no great trial experience, many of whom have made great judges, but in a different sense from what I am about to say about Judge Marshall.

It is a remarkably important item of equipment for a judge to have this tremendous experience with the rules of court, with the practices of lawyers, with the skill and experience of what represents argument, what wins cases, what has lost cases, the questions in which judges are interested, and the main point of the case, which a trial lawyer or a lawyer who argues many appeals becomes very adept, if he proves up—and Judge Marshall certainly has, as one of the most successful lawyers in appellate work in the United States. He gets a skill and understanding of the central point of a case, which is absolutely invaluable for a judge. I think that our country is remarkably fortunate to have obtained, as a judge, by Presidential appointment, a man, one, of his enormous range of trial and appellate experience, with the unusual equipment which that gives him for his task, as he has already shown, Mr. Chairman, in his work on the circuit court of appeal bench, for which he is already being lauded, and quite properly, in many quarters among lawyers.

Second, to have a man who has such very deep convictions about the validity of constitutional provisions, as has Judge Marshall.

And finally, Mr. Chairman, I would like to assure all of our colleagues and this subcommittee that knowing, as I do, the hardheadedness which comes from trial experience, and appellate experience, and Judge Marshall's character, I can assure the subcommittee—and I say this as a lawyer of long dedication myself—that this will be a judge who will call them as he sees them, even though, in a given case, it may run counter to all the very deep beliefs for which he has contended all his life.

I am confident that even in a civil rights case, Judge Marshall, if he feels as a lawyer convinced that it should be decided differently from the way he would like to see it decided, will decide it the way the law, in his honest judgment, dictates. I know of no higher tribute that could be paid a man like Judge Marshall than that. I am deeply convinced that is the case. Thank you, Mr. Chairman.

Senator HRUSKA. On behalf of the committee I want to thank the Senator from New York for his fine statement. The cause of jurisprudence and legislation in the field of the judiciary has long been graced by the very fine work of our junior Senator from New York, both on the House Judiciary Committee, and as a member of the Senator Judiciary Committee. We are very pleased now to call on Senator Keating.

STATEMENT OF HON. KENNETH B. KEATING, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator KEATING. Thank you, Mr. Chairman, for those kind words.

It is a great privilege for me to appear here to support the confirmation of Judge Marshall. He has been serving, as has been said, on the Second Circuit Court, since his recess appointment in October of 1961.

The importance of prompt action on his nomination has been forcefully expressed by the chief judge of the court of appeals, the Honorable J. Edward Lumbard. He has pointed out in communication with the committee that Judge Marshall has "carried a full share of the labors" of the court ever since his appointment.

He has explained that the full court of nine judges participates in all important cases and that a number of decisions of the court have been by a 5 to 4 vote.

Consequently—

Judge Lumbard has said—

it is highly desirable that each judge whose duty it is to vote on these matters should have the standing which only the action of the Senate can give the judge under the Constitution.

I would add to Chief Judge Lumbard's comments that the Court of Appeals for the Second Circuit is one of the busiest in the Nation. Congress recognized the overwhelming demands on the court when it approved legislation adding three new judges to its complement just last year. I would have hoped that the speedy action which this omnibus judgeship legislation received would be a precedent for prompt action on the nominations to fill the new vacancies.

As Senator Javits has said, Judge Marshall was named to the court after an outstanding career in the practice of law. He has argued more than a score of cases in the Supreme Court and other Federal courts and has been successful on almost every occasion, and has a record of which any practicing lawyer could be very proud. I wish that I could look back on my appearances before courts of appeal, or any trial courts, and say I had won 29 out of 32 cases. That is a remarkable record.

I personally applaud the great contribution he has made to our jurisprudence these last two decades. But one need not agree with the results he has achieved in order to recognize his eminence and skill as an advocate and member of the bar.

He has contributed mightily to the development of our law, has won renown for the forcefulness of his briefs and arguments, and has had unparalleled success measured by any standard. In my opinion we are fortunate that men of his proven competence in the law are available for judicial service on our Federal courts.

Now, Mr. Chairman, almost all the great lawyers of our time have been controversial figures. The nominee is no exception to that. But I have heard of no controversy about either the legal qualifications or judicial temperament of this nominee. On the contrary, he has been rated "well qualified" by the American Bar Association's Committee on Judicial Selection, and his work on the court to date already has earned him the high praise of his brother judges.

The controversy about Judge Marshall centers not about the man but the results he has achieved. I commend him for the part he has played in helping our fellow Americans enjoy all of their rights under the Constitution. If others do not share this view, their argument should be with the courts which have upheld his contentions, not with his persuasiveness as an advocate.

Judge Marshall, I am confident, will serve on the Federal court as a lawyer and an American, not as the special pleader for any group or segment of our country. We are now in the midst of an extended debate on civil rights legislation on the Senate floor. As I am certain every member of this subcommittee would agree, that debate should be kept within the Senate Chamber and not spill over into this hearing room. This is not the appropriate forum for a civil rights debate or the appropriate occasion for exhaustive scrutiny of the work of the NAACP.

Judge Marshall has been a member of the Maryland bar since 1933, shortly after his graduation from Howard University School of Law. He has been a member of the Supreme Court bar since 1939. He is also a member of the bar of the U.S. Court of Appeals for the Second Circuit, the court on which he is now serving, as well as the Courts of Appeal for the Fourth, Fifth, Sixth, and Eighth Circuits. He is also a member of the bars of numerous district courts and has been specially admitted to appear in many jurisdictions. He has never been in general practice in New York and is not a member of the New York State bar. But he has had an active litigation practice in the Federal courts, and I consider this ideal training for his new position.

I want to urge if possible that the committee follow the custom which it has on so many occasions, where I have served as a member

of the subcommittee, where we have met in executive session immediately after the hearings for a vote on the nominee. I hope this practice will be followed today. The full committee must ultimately act on the nomination, regardless of the recommendations of the subcommittee. Whether or not Judge Marshall is to be confirmed, therefore, the administration of justice would best be served by very prompt subcommittee action.

He has been serving for 6 months. We owe it, it seems to me, Mr. Chairman, to the court, and the many litigants whose cases it hears and decides, to avoid any further delay in completing action on this confirmation.

Again I express my gratitude for this opportunity to appear.

I would ask, Mr. Chairman, that there be made a part of the record a letter addressed to the committee from the Honorable Nelson A. Rockefeller, Governor of New York, dated April 13, 1962, in which, among other things, he says—

I would like to urge favorable action on the part of the committee. Mr. Marshall has earned and enjoys the universal respect of the legal profession, beyond sectional and partisan limitations, by reason of painstaking care in his approach to the knotty problems of constitutional law. In the explosive field of civil rights, his efforts have been marked by a becoming patience, and faith in our judicial system. I believe he possesses those qualities as a lawyer and as an American which we wish to see in those who preside in the courts of our Nation.

And I would also ask, Mr. Chairman, that there be made a part of the record a telegram from Dean William H. Mulligan, of the Fordham School of Law, in which I will only quote one sentence.

His reputation at the bar is outstanding. His experience and ability are demonstrably superior.

Senator HRUSKA. The letter and telegram will be made a part of the record.

(The letter dated April 13, 1962, referred to above was addressed to Hon. James O. Eastland, chairman, Senate Judiciary Committee, from Gov. Nelson A. Rockefeller, is as follows:)

STATE OF NEW YORK,
EXECUTIVE CHAMBER,
Albany, April 13, 1962.

Hon. JAMES O. EASTLAND,
Chairman, Senate Judiciary Committee,
Washington, D.C.

DEAR SENATOR EASTLAND: It is my understanding that the Senate Judiciary Committee, of which you are chairman, is about to consider Mr. Thurgood Marshall as a judge in the U.S. Court of Appeals, Second Circuit, to which position he was named by President Kennedy.

I would like to urge favorable action on the part of the committee. Mr. Marshall has earned and enjoys the universal respect of the legal profession beyond sectional and partisan limitations by reason of his painstaking care in his approach to the knotty problems of constitutional law. In the explosive field of civil rights, his efforts have been marked by a becoming patience and faith in our judicial system. I believe he possesses those qualities as a lawyer and as an American which we wish to see in those who preside in the courts of our Nation.

Sincerely,

NELSON A. ROCKEFELLER, *Governor.*

(The telegram dated April 13, 1962, referred to above was addressed to Hon. James O. Eastland, chairman, Senate Judiciary Committee, from Dean William H. Mulligan, Fordham University Law School, New York, N.Y., is as follows:)

WASHINGTON, D.C., *April 13, 1962.*

Hon. JAMES EASTLAND,
Chairman, U.S. Senate Judiciary Committee, Washington, D.C.:

I am pleased to recommend that the nomination of Hon. Thurgood Marshall to the court of appeals for the second circuit be approved by the committee. His reputation at the bar is outstanding; his experience and ability are demonstrably superior.

WILLIAM HUGHES MULLIGAN,
Dean, Fordham University School of Law.

Senator HRUSKA. Before we call on Judge Marshall himself, is there anyone in the audience who is desirous of appearing either on behalf or in opposition to the nomination?

(No response.)

Senator HRUSKA. If not, I should like to ask you, Judge Marshall, if you have before you this sheet, with biographical data, that was compiled by either the committee or someone on behalf of the committee.

STATEMENT OF THURGOOD MARSHALL, NOMINEE TO BE U.S. CIRCUIT JUDGE FOR THE SECOND DISTRICT

Mr. MARSHALL. Yes, I have it, Senator.

Senator HRUSKA. Have you examined it, so that you can tell us whether you wish to make any corrections or additions to it?

Mr. MARSHALL. Well, under the "experience," private practice of law in Baltimore, from 1933 to 1936, between 1936 and 1938, I commuted practically between Baltimore and New York, and there was considerable practice in that period.

Senator HRUSKA. Very well. That will be noted.

Any other corrections or additions?

Mr. MARSHALL. As I see it, Senator, that is correct. Of course, my office—when I was appointed, the office was 10 Columbus Circle.

(The biographical sketch of Mr. Marshall follows:)

THURGOOD MARSHALL

Born: July 2, 1908, Baltimore, Md.
Education: 1925–30, Lincoln University, Lincoln University, Pa., A.B. degree; 1933, Howard University, Washington, D.C., LL.B. degree.
Bar: 1933, Maryland.
Experience:
Years 1933–36, private practice of law, Baltimore, Md.
NAACP:
Years 1934–36, counsel for Baltimore branch.
Years 1936–38, assistant special counsel.
Years 1938–50, special counsel in charge of legal cases.
Years 1950–61, director-general of Legal Defense & Educational Fund, Inc., New York City.
Year 1951, investigator of courts-martial cases involving Negro soldiers in Japan and Korea.
Year 1960, consultant at Constitutional Conference on Kenya at London, England.

Year 1961, head of U.S. delegation at celebration of the independence of Sierre Leone, West Africa.
October 5, 1961, appointed U.S. circuit judge, second circuit (recess appointment).
October 23, 1961, oath of office.
Marital status: widower, two sons.
Office: 10 Columbus Circle, New York City.
Home: 501 West 123d Street, New York City.
To be U.S. circuit judge for the second circuit.

Senator HRUSKA. It is our understanding, Judge Marshall, that you were appointed last October?

Mr. MARSHALL. October 5.

Senator HRUSKA. And when did you assume the duties of your present office?

Mr. MARSHALL. I was sworn in on October 23, and started my duties on the morning of October 24.

Senator HRUSKA. And you have been sitting on the court since that time, participating in its deliberations?

Mr. MARSHALL. Yes. I have taken the regular turn with all of the other circuit judges. I have sat on panels, I have participated in en bancs, just as any other judges.

Senator HRUSKA. May I ask what the state of the docket is in the second circuit?

Mr. MARSHALL. We will be averaging between 380 and 400 cases a year, and that does not include the motions. Those are actually decided cases, or cases decided from the bench.

Senator HRUSKA. Cases in which opinions are written and made of record, cases which have been appealed from the circuit court?

Mr. MARSHALL. From either the southern district, the eastern district, or Connecticut, or Vermont. We cover the three States.

Senator HRUSKA. Three States. How many circuit judges are there in the circuit?

Mr. MARSHALL. There are nine active circuit judges, and four retired, senior judges.

Senator HRUSKA. And are those four who are retired called upon from time to time?

Mr. MARSHALL. Three of them take a rather active load. That is Judge Medina, Judge Swan, and Judge Hincks. Judge Chase does not, except on special occasions.

Senator HRUSKA. Does the court on occasion call upon district judges to participate in their deliberations?

Mr. MARSHALL. Yes. This year, so far, I think we have only had to do it once. Because of the full complement that we now have. Judge Anderson sat 1 week.

Senator HRUSKA. Have you any statement you would like to make at this time, Judge Marshall?

Mr. MARSHALL. I didn't have any prepared statement, Senator, except to answer any questions.

Senator HRUSKA. I have no questions of my own. I don't know whether either Senator McClellan or Senator Johnston would have.

When we are through here, I would propose to recess this subcommittee, subject to the call of the chairman, so that in the event of any questions on their part, we can have those questions asked of you.

Mr. MARSHALL. The only thing I would add is that on the statistics, I have written 14 or 15 opinions, I have dissented once on an opinion, and once on an en banc without an opinion. I have participated on panels that have rendered a total of 40-odd opinions, since October 24.

Senator HRUSKA. How many opinions was it that you yourself have written?

Mr. MARSHALL. Fourteen so far. I am now working on eight.

Senator HRUSKA. What is the nature of some of the cases in which you have written opinions?

Mr. MARSHALL. Securities Exchange Commission cases, labor cases, 22–55, the coram nobis type of case, a case involving a letter of credit between Julian Steel Co. and Bankers Trust of New York, FELA cases—Federal Employees Liability Act cases—Federal tort claims cases, and admiralty cases, of course, we have many of those. The range of cases in the second circuit is complete. There is hardly anything we don't get. I have also written opinions on patent and trademark cases.

Senator HRUSKA. Judge Marshall, in going over your biographical sketch here, I notice you became associated with the NAACP as counsel for the Baltimore branch in 1934. What has your practice been since that time? Has it been occupied exclusively as counsel in one capacity or another for the NAACP, or some of its affiliate organizations?

Mr. MARSHALL. Well, Senator, from the time I was admitted to the bar in Maryland in 1933, until sometime in the area of 1938 or 1939, during the 3 years I was in Maryland, between 1933 and 1936, I was in the active practice of law. I was not retained by the Baltimore branch. I just gave them service for free. But my practice in Baltimore was complete general practice, ranging from representing business corporations, building associations, negligence cases, criminal cases, probate cases, and so forth—the general practice of law in the State and Federal courts in Maryland.

From 1936 until 1938 I was based in New York, but I maintained an office in my mother's home in Baltimore, and I would come back to take care of the clients that really needed me until they adjusted over to new lawyers.

Senator HRUSKA. And since that time, you have been in New York.

Mr. MARSHALL. Since either 1938 or 1939, my work has been almost completely, with the exception of friends of mine, lawyers in Baltimore, who would have some special matter they wanted to talk to me about, legal matter I mean—but it would be completely——

Senator HRUSKA. You are a member of the Maryland Bar?

Mr. MARSHALL. Yes, I am.

Senator HRUSKA. Are you a member of any other bar?

Mr. MARSHALL. Of any other State bar; no, sir. But I am a member of most of the Federal Courts—the circuit courts, and some of the district courts. But the practice has been in these States, where I have participated in a local case, I have participated by motion of a local lawyer, to be specially admitted for the trial of that case.

Senator HRUSKA. And of what bar assoications are you member, if any?

Mr. MARSHALL. I am a member of the National Bar Association. That is predominantly a Negro group. And I was a member of the New York County Lawyers for quite some time. I don't think I am still. I don't know. And I think those are the only ones. At one time I was a member of the National Lawyers Guild—at one time, when it was first founded. But I resigned from that organization during the Communist trial—I have forgotten the exact year. I think it was 1949.

Senator HRUSKA. Well, I have no further questions, Judge Marshall. I would like to thank you for making your appearance. I thank the two Senators for their appearances. I should like at this time to recess the subcommittee hearing, subject to the call of the chairman.

Mr. MARSHALL. Thank you, Senator.

(Whereupon, at 11:10 a.m. the subcommittee was adjourned, subject to the call of the Chair.)

(Subsequently, a written statement was submitted for the record by Hon. Thomas J. Dodd, a U.S. Senator from the State of Connecticut, and is herewith printed in its entirety.)

STATEMENT OF SENATOR THOMAS J. DODD BEFORE THE SENATE JUDICIARY COMMITTEE IN SUPPORT OF THE NOMINATION OF MR. THURGOOD MARSHALL TO BE A JUDGE OF THE COURT OF APPEALS FOR THE SECOND CIRCUIT

Mr. Chairman, I wish to express my support of the nomination of Mr. Thurgood Marshall to be a judge of the Court of Appeals for the Second Circuit.

Few judicial nominees have come before this committee with so distinguished and impressive a legal background as Thurgood Marshall. As counsel to the National Association for the Advancement of Colored People he has devoted most of his career to the legal struggle for civil rights, the right to due process in criminal proceedings, the right to vote, the abolition of segregation in interstate travel, the abolition of restrictive realty covenants based on race, and the abolition of segregation in education.

Throughout these litigations Mr. Marshall has exhibited a capacity to work tirelessly, a high order of legal ability, and a deep-rooted respect for the processes of the law. Mr. Marshall has appeared before the U.S. Supreme Court in 32 cases. He has won 29 of these, many involving constitutional interpretations of vast importance. Anyone who has heard Mr. Marshall argue before the Court must acknowledge that he possesses a profound understanding of both the technical problems of legal advocacy and the broader philosophical questions of legal controversy.

Mr. Chairman, I believe that Mr. Marshall is worthy of the nomination to be a judge of the Court of Appeals for the Second Circuit. I am certain that he will serve on that court with great distinction. I urge that the members of this subcommittee recommend confirmation.

NOMINATION OF THURGOOD MARSHALL

THURSDAY, JULY 12, 1962

U.S. SENATE,
SUBCOMMITTEE ON NOMINATIONS OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee (composed of Senators Johnston, McClellan, and Hruska) met, pursuant to call, at 10:30 a.m., in room 2228, New Senate Office Building, Senator Olin D. Johnston presiding.

Present: Senators Johnston (presiding) and Hruska.

Also present: Senators Hart and Dirksen; L. P. B. Lipscomb, member of the professional staff, Committee of the Judiciary; and Joseph A. Davis, chief clerk.

Senator JOHNSTON. The subcommittee will come to order.

Hearings are now resumed from the May 1, 1962, session on the nomination of Thurgood Marshall to be U.S. circuit judge for the second circuit.

The first witness to be heard will be the Honorable Samuel I. Rosenman, representing the Association of the Bar of the City of New York but, prior to that, I notice we have the two Senators here from New York.

I wonder if Senator Javits or Senator Keating, either one, has anything to say at this time.

STATEMENT OF HON. JACOB K. JAVITS, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator JAVITS. Mr. Chairman, I appeared before, at the original hearing, and stated my sponsorship of, and recommendation of, Judge Marshall.

Senator Keating, my colleague, who knows the judge very well is a member of the committee and so is in an excellent position to tell the committee himself his views on the matter.

I would just like to repeat for the subcommittee, as now constituted, very, very briefly what I said before. I have known Thurgood Marshall for a great part of my professional life. It just happens that he is a man whom I know and have worked with myself as a lawyer in New York quite apart from my knowledge of him as a citizen and as a Senator and, hence, I can speak personally.

I consider him one of the best legal minds at our bar, and a citizen and a person of the highest character and quality.

I had the honor of appearing at the time that he was sworn in as a circuit judge. He has already graced that bench and demonstrated the capacity which, I know, he has, and I think all of New York

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knows he has, and the country, too. And I commend him most highly to the subcommittee.

I think it is rather unfortunate always when time elapses while a judge is sitting on the bench, and the Senate has not yet acted on his nomination. We all understand the exigencies which make that necessary in some cases.

And I expressly hope, because of my very high opinion of the judge and my strong feeling as a lawyer at the New York bar, and my knowledge of the contribution that he has made and will continue to make on the circuit court bench, that the action of the committee and the action of the Senate may be as prompt as the circumstances will allow.

I appreciate thoroughly that one cannot always move as fast as one would like to move, but I do express the hope that in this case, with a sitting judge and a man of such distinction, that the Senate might and the committee might act at their very earliest convenience.

Thank you, Mr. Chairman.

Senator JOHNSTON. Thank you, too.

I see Senator Keating. You will now be recognized.

STATEMENT OF HON. KENNETH B. KEATING, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator KEATING. Mr. Chairman, I will not take much time of the committee. The committee is well aware of my views with reference to this nomination. I strongly urge it.

I know Thurgood Marshall to be a man of great ability, utmost integrity, high character, and I just urge that the subcommittee conclude its deliberations and the full committee its deliberations at the earliest possible moment, not only out of fairness to the nominee but also the litigants who must appear before the court on which he is sitting.

As the chief judge of this court has recommended prompt action, and has praised the work of Judge Marshall, since he has been sitting, in the highest terms, and I commend him enthusiastically to the committee.

Senator JOHNSTON. I appreciate these remarks coming from you, Senator Keating, and also you, Senator Javits.

It seems as if we are having some trouble with two judges from New York. They have both been before the committee for some time now and, that being so, I know how you must feel in regard to it.

Senator KEATING. There is one difference. The next witness, Judge Rosenman, in this case appears strongly in favor of the nominee; whereas yesterday he appeared against that other nominee.

Senator JOHNSTON. I believe that is so.

Judge Rosenman?

STATEMENT OF SAMUEL I. ROSENMAN, ATTORNEY, NEW YORK, N.Y.

Mr. ROSENMAN. Thank you very much, Senator, for the privilege of appearing before you to make a very brief statement on behalf of the candidate.

Senator JOHNSTON. We are glad to have you come again, sir.

Mr. ROSENMAN. Thank you, sir.

My name is Samuel I. Rosenman. I have been a member of the Bar of the State of New York for about 42 years.

I was chairman of the Committee on the Judiciary of the Association of the Bar of the City of New York on September 21, 1961, when the question of the qualifications of then Mr. Marshall was passed upon.

We were asked to pass upon his qualifications by the Attorney General of the United States.

The committee on that day, based upon its own knowledge of Judge Marshall and his standing, and upon reports submitted to it orally by subcommittee of two of its members who had made inquiries about Judge Marshall, unanimously adopted the following resolution:

Resolved, That this Committee finds Thurgood Marshall qualified and approved to be a judge of the U.S. Court of Appeals for the Second Circuit.

Judge Marshall was subsequently appointed by the President and is now serving on that bench, and has served for about 9 months, and I might add, with great distinction.

I have asked to appear before this honorable subcommittee not only as chairman of the committee on the judiciary, which passed upon his qualifications, but also as an individual practitioner at the bar and as an individual American citizen.

I have personally known Judge Marshall as a person and as a lawyer for upwards of 15 years. I have had many social contacts with him during that time and have had frequent opportunity to discuss informally with him many legal questions, recent decisions of the Supreme Court, and of other Federal courts as well as existing and proposed legislation.

I believe that he is extraordinarily well equipped to serve on the U.S. Circuit Court for the Second Circuit from the point of view of legal knowledge and ability and judicial temperament, character, industry, and integrity.

His reputation among the lawyers of New York City is excellent.

The Law Reports of the U.S. Supreme Court and the Circuit Courts of Appeal testify to his ability as an advocate.

He is a serious scholar of the law in legal theory as shown by the resourceful arguments which he has urged upon our courts with great success.

At the time of his appointment he was considered a leading lawyer and one of our very fine and eminent citizens.

I served for 10 years as a justice of the Supreme Court of the State of New York in trial, motion, and appellate terms, and, in addition to that, I also served as special counsel to President Roosevelt and President Truman and, as a result of that experience, I believe that I am familiar with the attributes and the qualities which go to make up a good Federal judge.

Judge Marshall has those attributes and qualities. I consider him to be a great asset to the Federal bench and to the court on which he is now sitting.

Thank you very much, Mr. Chairman.

Senator JOHNSTON. Judge Rosenman, we certainly thank you for coming here before us and giving us this information.

You can feel free to come before this subcommittee at any time. We are always glad to have you.

Mr. ROSENMAN. Thank you, sir.

Senator JOHNSTON. The next witness we have with us, of course, is Thurgood Marshall.

We have here with us this morning, representing the subcommittee, Mr. L. P. B. Lipscomb, a member of the professional staff of the Senate Judiciary Committee, who has been assigned to the subcommittee for the purpose of this hearing.

So at this time I will turn the matter over to him for such questions as he might see fit to ask.

STATEMENT OF THURGOOD MARSHALL, NOMINEE TO BE U.S. CIRCUIT JUDGE FOR THE SECOND CIRCUIT

Mr. LIPSCOMB. Judge Marshall, in 1956 did you appear as counsel for the NAACP Legal Defense and Educational Fund, Inc., in a suit filed by the State of Texas against the NAACP, and others, brought in the district court of Smith County, Tex., the seventh judicial district, at Tyler?

Mr. MARSHALL. In the Tyler case the official lawyer representing the organization was William B. Bunkley. I think it is "Bunkley"—but I was there with him during the entire trial and did put my name down as one of the two, with the understanding that he was the chief counsel.

Mr. LIPSCOMB. Were you also the chief witness in that case for the NAACP Legal Defense and Educational Fund?

Mr. MARSHALL. I wouldn't say the "chief witness" but I was a witness.

Mr. LIPSCOMB. In what official capacity did you appear as a witness for the Legal Defense and Educational Fund?

Mr. MARSHALL. I appeared as the director and counsel for that organization, as I remember.

Mr. LIPSCOMB. As the director and counsel for the Legal Defense and Educational Fund what was the nature and extent of your official duties and obligations at that time?

Mr. MARSHALL. At that time I was the chief executive officer of the NAACP Legal Defense Fund.

Mr. LIPSCOMB. What did your duties embrace as the chief executive officer?

Mr. MARSHALL. Well, general supervision of the operations of the organization.

Mr. LIPSCOMB. And how widespread were those operations at that time?

Mr. MARSHALL. You mean areawise?

Mr. LIPSCOMB. Areawise, yes, sir.

Mr. MARSHALL. Well, I think that we were helping out in cases in, I would say, a dozen or—in the Federal courts in a dozen or more States and in the U.S. Supreme Court.

Mr. LIPSCOMB. How long had you served as an officer and employee of the Legal Defense and Educational Fund?

Mr. MARSHALL. Since its inception in 1940, I think was the date.

Mr. LIPSCOMB. Now, in addition to the Legal Defense and Educational Fund, Inc., which was a foreign corporation, chartered under the laws of the State of New York, the NAACP is a nonprofit corporation, incorporated under the laws of New York.

The Southwestern Regional Conference of the NAACP and the Texas State Conference are branches of the NAACP, and also numerous local branches of the NAACP of the State of Texas were also defendants.

Will you briefly describe the relationship and interrelationship, if any, of these various defendants?

Mr. MARSHALL. Well, the NAACP Legal Defense and Educational Fund only had one representative in the State of Texas, a lawyer by the name of U. S. Tate.

The other groups you named were all under the National Association for the Advancement of Colored People as a separate corporation, and we had no jurisdiction at all over them.

Mr. LIPSCOMB. You had one representative in Texas that was actually in the focal point of this suit, insofar as the Legal Defense and Educational Fund was concerned?

Mr. MARSHALL. That's right, U. S. Tate.

Mr. LIPSCOMB. Now, numerous averments were made in the original and amended petition regarding the unauthorized activities of the named defendants in operating in the State of Texas, and a permanent injunction was sought to prohibit the organization from engaging in the described character of activities.

Could you tell the committee, in brief, the nature and character of those averments?

Mr. MARSHALL. As I remember, the averments were that the operations of both the organizations were against the laws of the State of Texas in that it stirred up litigation and financed the litigation that had been stirred up by the organizations.

That is a short, I think, coverage of it. It was in very great detail.

Mr. LIPSCOMB. The averments were long.

I will call your attention to five and six, wherein it was alleged:

Plaintiff alleges that said defendant, the National Association for the Advancement of Colored People, and its affiliated organizations—

which include all of the organizations that we outlined—

have indulged in and are continuing to indulge in political activities contrary to the laws of the State of Texas.

Defendants have, pursuant to a preconceived plan, solicited, recruited, and coerced students and parents of students to take steps in bringing lawsuits that otherwise they would not have taken.

It is further alleged that by such solicitation and recruiting of prospective plaintiffs, the defendants have been guilty of barratry, in contravention of the laws of this State, and it is further alleged that these corporate defendants, pursuant to this preconceived plan, have unlawfuly practiced the profession of law contrary to the laws of this State and in contravention of the canons of ethics of the legal profession.

Were those part of the averments, as you recall them?

Mr. MARSHALL. As I recall, it was a part of them.

Mr. LIPSCOMB. On June 7, 1957, after extended hearings concerning which testimony is contained in more than 10 volumes, and the exhibits in 11 volumes or more, the presiding judge, Otis T. Dunagan, made his findings of fact and conclusions of law.

I hand you herewith a photostatic copy of these findings of fact and conclusions of law and ask you if you will examine them for the record.

Mr. Chairman, I would like to have this document designated as "Exhibit 1."

Mr. MARSHALL. I would say, sir, that this appears to be a copy of it. It is 16 pages, of course, but it appears to be.

Senator JOHNSTON. So you do identify it for the record then as being——

Mr. MARSHALL. It appears to be, sir. Yes, sir.

Senator JOHNSTON. It becomes a part of the record then.

(Exhibit 1 follows:)

EXHIBIT NO. 1

IN THE DISTRICT COURT OF SMITH COUNTY, TEXAS

SEVENTH JUDICIAL DISTRICT

NO. 56-649

STATE OF TEXAS V. THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, ET AL.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In response to the request of the Plaintiff in the above-entitled and numbered cause, I, the Judge who tried said cause, do make and file the following as my findings of fact and conclusions of law therein:

FINDINGS OF FACT

1. That the National Association for the Advancement of Colored People is a nonprofit corporation duly incorporated under the laws of the State of New York.

2. That such Corporation is doing both interstate and intrastate business within the State of Texas, and that it has transacted intrastate business in Texas from 1915 to the present.

3. That the Defendant N.A.A.C.P. Legal Defense and Educational Fund, Inc. is a New York corporation duly incorporated under the laws of the State of New York.

4. That it is a nonprofit organization now doing interstate business within the State of Texas.

5. That prior to the institution of this action the business transacted within the State of Texas by the National Association for the Advancement of Colored People was originally the same as that transacted in Texas by the N.A.A.C.P. Legal Defense and Educational Fund, Inc., and each constituted the alter ego of the other.

6. That after the institution of this lawsuit, and at the present time, the business of the two New York corporations is completely divorced and separated, each from the other.

7. That the Southwest Regional Conference of the N.A.A.C.P. is a subordinate and component part of the National Association for the Advancement of Colored People, a New York corporation, and has been such component part during all of its existence.

8. That the Texas State Conference of Branches is a subordinate and component part of the National Association for the Advancement of Colored People, a New York Corporation, and consists of a statewide organization of all the local branches of the National Association for the Advancement of Colored People, a New York corporation, in the State of Texas.

9. That both the Southwest Regional Conference and the Texas State Conference of Branches were operated subject to and were a part of the National Association for the Advancement of Colored People at all times prior to the institution of this action and such was true at the time of the entry of the judgment in this cause.

10. That the following-named branches are local branches of the National Association for the Advancement of Colored People existent in Texas at the time of the bringing of this lawsuit: Branch No. 1, Area 10, Abilene, Texas; Branch No. 2, Area 13, Amarillo, Texas; Branch No. 3, Area 4, Austin, Texas; Branch No. 4, Area 5, Austin County (Sealy, Bellville), Texas; Branch No. 5, Area 4, Bastrop, Texas; Branch No. 6, Area 2, Bay City, Texas; Branch No. 7, Area 5, Baytown, Texas; Branch No. 8, Area 6, Beaumont, Texas; Branch No. 9, Area 5, Brazos County (Bryan) Texas; Branch No. 10, Area 1, Beeville, Texas; Branch No. 11, Area 11, Big Spring, Texas; Branch No. 12, Area 5, Brookshire, Texas; Branch No. 13, Area 10, Brownfield, Texas; Branch No. 14, Area No. 12, Brownwood, Texas; Branch No. 15, Area 4, Burton, Texas; Branch No. 16, Area 5, Carmine, Texas; Branch No. 17, Area 4, Brenham, Texas; Branch No. 18, Area 1, Corpus Christi, Texas; Branch No. 19, Area 12, Corsicana, Texas; Branch No. 20, Area 6, Crockett, Texas; Branch No. 21, Area 8, Dallas, Texas; Branch No. 22, Area 8, Denison, Texas; Branch No. 23, Area 2, Eagle Lake, Texas; Branch No. 24, Area 1, Edinburg, Texas; Branch No. 25, Area 4, Elgin, Texas; Branch No. 26, Area 8, Ellis County (Ennis), Texas; Branch No. 27, Area 11, El Paso, Texas; Branch No. 28, Area 2, Fort Bend County, Texas; Branch No. 29, Area 9, Fort Worth, Texas; Branch No. 30, Area 4, Franklin, Texas; Branch No. 31, Area 2, Freeport, Texas; Branch No. 32, Area 5, Galveston, Texas; Branch No. 33, Area 8, Garland, Texas; Branch No. 34, Area 4, Greggton, Texas; Branch No. 35, Area 7, Gilmer, Texas; Branch No. 36, Area 8, Greenville, Texas; Branch No. 37, Area 6, Hardin, Texas; Branch No. 38, Area 1, Harlingen, Texas; Branch No. 39, Area 7, Harrison County (Marshall), Texas; Branch No. 40, Area 4, Hearne, Texas; Branch No. 41, Area 7, Henderson, Texas; Branch No. 42, Area 7, Henderson County, Texas; Branch No. 43, Area 5, Hitchcock, Texas; Branch No. 44, Area 7, Hooks, Texas; Branch No. 45, Area 5, Houston, Texas; Branch No. 46, Area 12, Itasca, Texas; Branch No. 47, Area 8, Kaufman, Texas; Branch No. 48, Area 7, Kilgore, Texas; Branch No. 49, Area 1, Kingsville, Texas; Branch No. 50, Area 4, LaGrange, Texas; Branch No. 51, Area 4, LaMarque, Texas; Branch No. 52, Area 10, La-Mesa, Texas; Branch No. 53, Area 6, Liberty County, Texas; Branch No. 54, Area 10, Littlefield, Texas; Branch No. 55, Area 7, Longview, Texas; Branch No. 56, Area 10, Lubbock, Texas; Branch No. 57, Area 4, Luling, Texas; Branch No. 58, Area 4, Lyons, Texas; Branch No. 59, Area 5, Madison County, Texas; Branch No. 60, Madisonville, Texas; Branch No. 61, Area 9, Mansfield, Texas; Branch No. 62, Area 12, Marlin, Texas; Branch No. 63, Area 11, McCamey, Texas; Branch No. 64, Area 11, Midland, Texas; Branch No. 65, Area 7, Mineola, Texas; Branch No. 66, Area 9, Mineral Wells, Texas; Branch No. 67, Area 11, Monahans, Texas; Branch No. 68, Area 9, Moshier Valley, Texas; Branch No. 69, Area 7, Mt. Pleasant, Texas; Branch No. 70, Area 7, Nacogdoches, Texas; Branch No. 71, Area 3, New Braunfels, Texas; Branch No. 72, Area 11, Odessa, Texas; Branch No. 73, Area 6, Orange, Texas; Branch No. 74, Area 7, Paris, Texas; Branch No. 75, Area 11, Pecos, Texas; Branch No. 76, Area 8, Plano, Texas; Branch No. 77, Area 7, Ponta, Texas; Branch No. 78, Area 6, Port Arthur, Texas; Branch No. 79, Area 10, Quanah, Texas; Branch No. 80, Area 2, Refugio, Texas; Branch No. 81, Area 1, Robstown, Texas; Branch No. 82, Area 12, Runnels County, Texas; Branch No. 83, Area 7, Rusk, Texas; Branch No. 84, Area 12, San Angelo, Texas; Branch No. 85, Area 3, San Antonio, Texas; Branch No. 86, Area 4, San Marcos, Texas; Branch No. 87, Area 4, Schulenberg, Texas; Branch No. 88, Area 3, Seguin, Texas; Branch No. 89, Area 8, Sherman, Texas; Branch No. 90, Area 2, Shiner, Texas; Branch No. 91, Area 1, Sinton, Texas; Branch No. 92, Area 10, Slaton, Texas; Branch No. 93, Area 4, Smithville, Texas; Branch No. 94, Area 10, Spur, Texas; Branch No. 95, Area 7, Sulphur Springs, Texas; Branch No. 96, Area 4, Taylor, Texas; Branch No. 97, Area 12, Temple, Texas; Branch No. 98, Area 8, Terrell, Texas; Branch No. 99, Area 7, Texarkana, Texas; Branch No. 100, Area 5, Texas City, Texas; Branch No. 101, Area 7, Troup, Texas; Branch No. 102, Area 7, Tyler, Texas; Branch No. 103, Area 9, Vernon, Texas; Branch No. 104, Area 9, Victoria County, Texas; Branch No. 105, Area 12, Waco, Texas; Branch No. 106, Area 8, Waxahachie, Texas; Branch No. 107, Area 2, West Columbia, Texas; Branch No. 108, Area 5, Wharton County, Texas; Branch No. 109, Area 8, White Rock, Texas; Branch No. 110, Area 9, Wichita Falls, Texas; Branch No. 111, Area 7, Winnsboro, Texas; Branch No. 112, Area 2, Yoakum, Texas.

11. That each of the above-named statewide regional and local organizations of the Defendant National Association for the Advancement of Colored People, along with the national association, are so meshed, interrelated, and

intertwined with each other in their operation, functioning, and financing so as to constitute the entire group, a master organization with each the alter ego of the other.

12. That the said National Association for the Advancement of Colored People has used the subordinate and auxiliary branches, regional and state conferences of branches of the National Association for the Advancement of Colored People for the accomplishment of the Directives and policies of the said national association.

13. That prior to the institution of this lawsuit, the activities of the N.A.A.C.P. Legal Defense and Educational Fund, Inc., were so meshed, interrelated, and intertwined with the activities of the National Association for the Advancement of Colored People and its subordinate and auxiliary component organizations as to constitute said N.A.A.C.P. Legal Defense and Educational Fund, Inc., the alter ego of the said National Association for the Advancement of Colored People.

14. That prior to the institution of this lawsuit, the acts of the N.A.A.C.P. Legal Defense and Educational Fund, Inc., and its paid employees constituted the acts of the National Association for the Advancement of Colored People.

15. That the N.A.A.C.P. Legal Defense and Educational Fund, Inc., was cognizant of the activities of its agents and employees concerned in this lawsuit; that it acquiesced in such conduct, and thereby ratified it.

16. That the National Association for the Advancement of Colored People was cognizant of the activities of its employees and agents in the State of Texas at all times material to this lawsuit: that it acquiesced in such activities and thereby has ratified them as its own activities.

17. That the local branches, hereinabove named, of the National Association for the Advancement of Colored People are subject at all times to the control of the National Association for the Advancement of Colored People.

18. The Board of Directors of the National Association for the Advancement of Colored People have plenary power and control over all of the affairs of the National Association for the Advancement of Colored People.

19. That the National Association for the Advancement of Colored People has the power and has, in the past, and does exercise control and supervision over the affairs of the constituent local branches.

20. The board of Directors of the National Association for the Advancement of Colored People is empowered to establish, and under such power has established regional conferences, state conferences of branches and local branches for the advancement of the objectives of the Association with such organizations being subservient to the actions and directives of said Board.

21. That the N.A.A.C.P. Legal Defense and Educational Fund, Inc., was established by the National Association for the Advancement of Colored People for the purpose of providing a subsidiary of Colored People for the purpose of providing a subsidiary which could carry on expensive portions of the activities of the National Association for the Advancement of Colored People and offer its contributors tax-free treatment of their contributions.

22. U. Simpson Tate was the attorney and salaried employee of the N.A.A.C.P. Legal Defense and Educational Fund, Inc., having the title of Southwest Regional Counsel.

23. While acting in such capacity on numerous occasions, the said U. Simpson Tate did counsel with, advise, and instruct the above-named local branches in Texas of the National Association for the Advancement of Colored People, which activity constituted the primary activity of the said U. Simpson Tate in his position as Southwest Regional Counsel.

24. That in so counseling with said local branches in Texas, the said Tate used and employed stationary of the N.A.A.C.P. Legal Defense and Educational Fund, Inc., and signed letters as the Southwest Regional Counsel.

25. That the said U. Simpson Tate, while employed by the N.A.A.C.P. Legal Defense and Educational Fund, Inc., worked for and carried out the directives of the National Association for the Advancement of Colored People in intrastate commerce within the State of Texas.

26. That the said activity of U. Simpson Tate was known to his employers, the N.A.A.C.P. Legal Defense and Educational Fund., and to the people whom he represented, the National Association for the Advancement of Colored People, during all of the times pertinent to this lawsuit.

27. That such New York corporations ratified the acts and activity of the said U. Simpson Tate in the transaction of intrastate business for each such corporation.

28. That Edwin C. Washington, Jr., at the time of the institution of this suit and for a considerable period prior to such time, was an employee of the National Association for the Advancement of Colored People, and was under the supervision of the Board of Directors of the National Association for the Advancement of Colored People.

29. That the acts of the said Edwin C. Washington, Jr., were known to his employers and acquiesced in, and that such employer, the National Association for the Advancement of Colored People has ratified the actions taken by the said Edwin C. Washington, Jr.

30. That prior to this suit, the National Association for the Advancement of Colored People, through its branches and controlled associations including the N.A.A.C.P. Legal Defense and Educational Fund, Inc., has practiced law as a corporation in violation of the laws of Texas.

31. The said corporation and its affiliates retained legal counsel on a salary basis for the prosecution of lawsuits in which the Association had no direct interest.

32. That one of the primary purposes of the said Association and its affiliate organizations was the maintenance of lawsuits on behalf of others in which said Association or its affiliate organizations had no direct personal, monetary, or legal interest.

33. That the said Association and its affiliates promoted and encouraged the filing of lawsuits; that it required all such lawsuits to be approved by officials of the said Association, a corporation, and that it refused financial assistance to any lawsuit over which it would not have complete management and control.

34. The National Association for the Advancement of Colored People, and its dominated N.A.A.C.P. Legal Defense and Educational Fund, Inc., its branches and its state and regional conferences have, contrary to the laws of Texas, practiced barratry within the State of Texas.

35. That pursuant to directives from the National Association for the Advancement of Colored People, its branches, and its employees and affiliated organizations instituted a course of conduct designed toward bringing a large number of lawsuits, that this course of conduct as implemented on the local level with the knowledge, consent, and direction of the National Association for the Advancement of Colored People, was by the solicitation and procurement of plaintiffs for lawsuits in designated areas, which such lawsuits were to be filed, maintained, and prosecuted by the National Association for the Advancement of Colored People and its affiliated N.A.A.C.P. Legal Defense and Educational Fund, Inc., and its branches and state and regional organizations.

36. That pursuant to said directives of the National Association for the Advancement of Colored People, its employees, and the employees of the N.A.A.C.P. Legal Defense and Educational Fund, Inc., or their representatives, began a systematic campaign to secure refusals of the usage of public facilities in the State of Texas in order that additional lawsuits could be instituted.

37. That repeated letters of the salaried attorney of the N.A.A.C.P. Legal Defense and Educational Fund, Inc., to the various branches and branch officers of the National Association for the Advancement of Colored People made requests that the branches find "qualified plaintiffs" for the suits concerning public facilities who would be willing to appear in court as plaintiffs.

38. That the various officers, members, and employees of the said Defendants sought out and solicited individuals in Gregg County, Texas, for the purpose of using them as plaintiffs in lawsuits against the Kilgore Junior College District; that the said officers, members and employees solicited individuals and their parents to bring an action against the Kilgore Junior College District, Civil Action No. 1481 in the United States District Court for the Eastern District of Texas, sitting in Smith County, Texas, styled Norma Joyce Allen, et al, Plaintiffs v. B. E. Masters, et al, Defendants, which said lawsuit would not have been brought by the plaintiffs but for the solicitation of the Defendants herein.

39. That such lawsuit was instigated, financed and prosecuted by the Defendants herein.

40. That the said U. Simpson Tate, in order to obtain plaintiffs for lawsuits to be prosecuted by the National Association for the Advancement of Colored People issued a memorandum dated May 26, 1954, urging all branch officers of the National Association for the Advancement of Colored People in Texas to get

students to make application to attend certain colleges, with the direction that if these students were denied admission to said colleges, the officers were to inform his office at once, and that this memorandum was made for the purpose of soliciting plaintiffs for lawsuits to be brought, financed, and prosecuted by the National Association for the Advancement of Colored People and its affiliates.

41. July 6, 1950, U. Simpson Tate directed Dr. H. Boyd Hall of Corpus Christi, Texas, to find, secure and solicited two or more persons who would agree to make application to attend Del Mar Junior College, Corpus Christi.

42. The U. Simpson Tate, acting as a representative for the defendants herein during the period from June 1947 through March 1956, acted in concert with Rev. R. H. Hines, of Amarillo, in soliciting various individuals for permission to use their names as plaintiffs in lawsuits in the Amarillo area.

43. That said U. Simpson Tate, acting for and on behalf of the Defendants herein, instructed Rev. A. H. Wilson of Galveston, Texas, to secure children to tender for registration and admission in certain schools in Galveston, Texas; that such tender was to be for the formulation of a lawsuit against the Galveston Schools.

44. That on August 15, 1951, U. Simpson Tate, Regional Special Counsel, directed Mr. T. R. Register of Tyler, Smith County, Texas, to make a demand for use of Tyler State Park; that pursuant to such instructions, Mr. Register and others from the City of Tyler presented themselves to the State Park, were refused and a lawsuit instituted against the State of Texas; that such solicitation was for the very purpose of instituting a lawsuit.

45. That on August 15, 1951, a letter was written by U. Simpson Tate to Mr. G. A. Carroll of Corpus Christi, Texas, directing him to secure plaintiffs for lawsuits against the State of Texas in connection with the Corpus Christi State Park; that this letter was in all respects and for the same purposes as that sent to Mr. T. R. Register, as stated above.

46. That on July 19, 1956, in a letter to John J. Jones of Texarkana, Texas, U. Simpson Tate, acting for and on behalf of Defendants herein, instructed the said Jones to secure a few negro children or adults to be refused the use of a park in Texarkana.

47. That pursuant to these instructions and other prior directives, persons under the direction of members of the Texarkana branch of the National Association for the Advancement of Colored People, did present themselves to the park in Texarkana.

48. That the said U. Simpson Tate, acting in concert with John J. Jones of Texarkana, Texas, and in behalf of Defendants in this lawsuit, solicited plaintiffs for lawsuits against the Texarkana Junior College, Texarkana, Texas.

49. That the solicitations of the said U. Simpson Tate and John J. Jones resulted in the filing of a Plea in Intervention by the said U. Simpson Tate in the District Court of the United States for the Eastern District of Texas sitting in Tyler, Smith County, Texas, Civil Action No. 366, entitled Wilma Dean Whitmore v. H. W. Stillwell.

50. That in said Plea in Intervention, said U. Simpson Tate, as a representative of the Defendants herein, purported to represent one Steve James Poston and one Jessalyn Yvonne Gray.

51. That the said U. Simpson Tate at the time the Plea in Intervention was filed and at the time a hearing on said matter was held, did not have authority to represent said persons, and the said intervenors named in said Plea in Intervention has no knowledge of such proposed action, had never given their consent for U. Simpson Tate to file an action in their behalf or for any one else to do so.

52. That the said Steve Poston and Jessalyn Gray had never seen U. Simpson Tate prior to the time of the hearing on the Plea in Intervention.

53. That on June 1, 1955, U. Simpson Tate forwarded petitions to the Houston branch of the National Association for the Advancement of Colored People with instructions to have citizens sign said petitions to be presented to the Houston School Board in order that a predicate might be laid for the filing of a lawsuit against such Board.

54. That in so doing, said U. Simpson Tate was soliciting plaintiffs for a proposed lawsuit and using the members of the Houston branch for the National Association for the Advancement of Colored People as his agents for such solicitation.

55. That in the fall of 1955, U. Simpson Tate, together with Edwin C. Washington, Jr., and Dr. L. E. Smith, Chairman of the Legal Redress Committee of the Houston Branch of the National Association for the Advancement of Colored

People, solicited plaintiffs for proposed lawsuits against the University of Houston and other public schools of Houston, Texas.

56. That during the summer of 1955, Edwin C. Washington, Jr., as Field Secretary of the National Association for the Advancement of Colored People, made a thorough and systematic canvass of the Dallas Independent School District for the purpose of soliciting and securing plaintiffs for a lawsuit against the Dallas Independent School District; that in making this canvass and solicitation, said Edwin C. Washington, Jr., employed the services of various members of the Dallas branch of the National Association for the Advancement of Colored People.

57. That during this canvass the said Edwin C. Washington, Jr., as representative of the National Association for the Advancement of Colored People and the members who were aiding him did solicit persons to file a lawsuit or lawsuits against the Dallas Independent School District; that, in effect, the said Edwin C. Washington, Jr., and his helpers were acting as agents and "runners" for the Attorneys of the National Association for the Advancement of Colored People.

58. That the said Edwin C. Washington, Jr., as a part of his duties as Field Representative for the National Association for the Advancement of Colored People, mailed numerous forms, petitions, and other instruments, including blanks for the proposed plaintiffs to authorize the filing of lawsuits, to the various branches of the National Association for the Advancement of Colored People in Texas in furtherance of an effort to secure plaintiffs for suits in these areas.

59. Edwin C. Washington, Jr., was soliciting, recruiting, and encouraging, through the local branches, students and parents of students to become plaintiffs in lawsuits that they otherwise would not have brought.

60. That on August 19, 1956, Edwin C. Washington, Jr., solicited certain individuals for the purpose of securing plaintiffs in prospective lawsuits; that in this solicitation, Edwin C. Washington, Jr., was aided by Rev. S. Y. Nixon, of Longview, Texas, which such solicitations occurred in Gregg County, Texas.

61. That on November 17, 1955, A. Maceo Smith, Executive Secretary of the Texas State Conference of Branches through Mrs. C. V. Adair, Executive Secretary, Houston Branch, N.A.A.C.P., and Dr. Lonnie Smith, Chairman, Legal Redress Committee of the Houston Branch, encouraged the Houston Branch for the National Association for the Advancement of Colored People to initiate lawsuits against the Houston Independent School District as well as lawsuits against the Houston Transit System.

62. That in August of 1955, the said A. Maceo Smith, in his official capacity, urged the Houston Branch of the National Association for the Advancement of Colored People to initiate a lawsuit against the operators of the Houston Municipal Airport.

63. That A. Maceo Smith, in each instance set out above, was acting as an employee and agent of the said Defendants and especially of the Defendant Texas State Conference of Branches; that the National Association for the Advancement of Colored People, through its Texas State Conference of Branches, knew of the activities of A. Maceo Smith stated above; that they acquiesced in such activities and have ratified them.

64. That each time A. Maceo Smith, Edwin C. Washington, Jr., U. Simpson Tate or other employee, officer, or director of the Association or any of its affiliates urged, directed, or instructed any official of a local branch to do or perform certain acts, the local branch, under threat of expulsion from the Association, was required to perform such acts in the manner and within the time required by such employee, officer, or director of the association.

65. That on the 19th day of September 1956, the Attorney General of Texas timely and reasonably sought to investigate and examine the files, books, records, and accounts of the Defendant corporations in their national headquarters in New York City, New York.

66. That the Attorney General and his duly authorized representatives were refused and denied permission to investigate the following records of said corporation:

1. Membership lists;
2. Gross receipts, income, and expenditures;
3. Funds and salaries paid out, and to whom paid;
4. Social Security reports to the Internal Revenue Department.

67. That the demand made upon said corporations was necessary on behalf of the Attorney General of Texas to determine the extent of the operation of the said corporation, whether the laws of Texas had been violated, and whether any franchise taxes were owed the State of Texas.

68. That at the time of the presentation of the request to examine the books, records, documents, and accounts of said corporations, Thurgood Marshall, acting for and on behalf of said corporations, refused to permit the authorized representative of the Attorney General to examine certain letters and correspondence, but while sitting at his desk mutilated such documents by cutting signatures and addresses and then delivering said mutilated copies to the representative of the Attorney General.

69. That the national corporations failed and refused to allow the authorized representative to examine its books, records, and documents in accordance with the law of Texas.

70. That the Defendant, the National Association for the Advancement of Colored People, and its affiliated organizations have engaged in political activities contrary to the laws of the State of Texas.

71. That the said National Association for the Advancement of Colored People, through its local branches, its Texas State Conference of Branches, and its Southwest Regional Conference, has attempted to influence legislation through the maintenance of active lobbyists both in Washington, D.C., and in Austin, Texas.

72. That the National Association for the Advancement of Colored People and its component organizations, and the N.A.A.C.P. Legal Defense and Education Fund, Inc., by and through its paid employees, have committed acts within the State of Texas, which are ultra vires, and contrary to the laws of the State of Texas.

73. That the Defendants have committed acts of barratry in violation of the laws of the State of Texas: that the Defendants have practiced law as a corporation contrary to the laws of Texas; that the Defendants have conducted lobbying activities contrary to the laws of the State of Texas: and that the Defendants have engaged in political activities contrary to the laws of the State of Texas by the endorsement and backing of specific candidates in elections within the State of Texas.

74. That there was no intimidation of any kind in any witness, party, branch officer, state officer, regional officer, or national officer of the said Defendants: that all of the requests for records and accounts of the said Defendants were reasonable, necessary, timely, and proper in every respect.

75. That the investigation and examination of the records of the Defendants and each of them wer made under the visitorial power of the Attorney General.

76. That the investigation of the books and records of the defendants and each of them was conducted in a reasonable manner at reasonable times.

77. That none of the investigators of the State of Texas employed any device, trick, or artifice to obtain information or records of any of the defendants.

78. None of the defendants, their agents, servants, employees, directors, or branch officers were intimidated by investigators for the State of Texas.

79. None of the information, books, records, or accounts obtained as a result of the investigation preparatory to the institution of this suit was obtained by duress.

Signed this the 7th day of June, 1957.

/s/ OTIS T. DUNAGEN,
Judge, Seventh Judicial District Court,
Smith County, Texas.

CONCLUSIONS OF LAW

1. That a nonprofit foreign corporation, such as the Defendants herein, is required to file franchise tax reports and returns, and to pay franchise taxes to the State of Texas for the privilege of operating in intrastate commerce within the State of Texas.

2. That a nonprofit foreign corporation is not required to obtain a permit from the Secretary of State as a condition precedent to their right to transact business within the State of Texas.

3. That as a condition to the right to do business within the State of Texas, all corporations authorized to do business in Texas, whether domestic or foreign, for profit or nonprofit, are required to permit examinations of their books, accounts, and records by the Attorney General of the State of Texas, and his au-

thorized assistants, and by the State Auditor of Texas and his authorized assistants.

4. That the functioning, operation, and business transactions of the National Association for the Advancement of Colored People, its Southwest Regional Conference, its Texas State Conference of Branches, and its local branches hereinabove named, and the N.A.A.C.P. Legal Defense and Educational Fund, Inc., as of the time of the institution of this suit and prior to that time, was so meshed, interrelated, and intertwined as to constitute each of said organizations the alter ego of the others; that the activities of the employees or officers of one of said corporations or its subsidiary organizations constituted the acts of the other corporation.

5. That the right to operate and transact intrastate business as a corporation, either domestic or foreign, within a state is a privilege and not a matter of right, and such corporations must comply with the laws of the State of Texas.

6. That a foreign corporation has no right to transact any intrastate business within the State of Texas which is prohibited by the law of its domicile or by the laws of the State of Texas.

7. That none of the Defendants herein have the right to engage in the practice of law within the State of Texas.

8. That neither of the Defendants has any right under the laws of Texas for their own profit or with the intent to distress or harass the defendant therein, willfully instigate, maintain, excite, prosecute, or encourage the bringing in any Court in this State, whether Federal or State Court, of a suit in law or equity in which such Defendant has no direct interest; that such Defendants have no lawful right to violate Article 430 of the Penal Code of the State of Texas.

9. That neither of the Defendants has a lawful right under the laws of the State of Texas to seek to obtain employment in any claim to prosecute or defend an action by means of personal solicitation for such employment or by procuring another to solicit for said Defendant employment in such claim.

10. That neither of the Defendants herein has a lawful right under the laws of the State of Texas to incite or solicit lawsuits for filing or to solicit persons to file, maintain, or prosecute lawsuits, or to finance lawsuits so solicited or incited by the said Defendants or any of them.

11. That neither of the Defendants herein has any lawful right under the laws of the State of Texas to hire or pay any litigant to bring, maintain, or prosecute a suit.

12. That the Defendants herein have no lawful right to engage in political activities contrary to the laws of the State of Texas.

13. That the Defendants herein have no lawful right under the laws of the State of Texas to engage in lobbying activities contrary to the laws of the State of Texas.

14. That the Defendant National Association for the Advancement of Colored People, its local branches hereinabove named, its Texas State Conference of Branches, its Southwest Regional Conference and its Subsidiary organization, the N.A.A.C.P. Legal Defense and Educational Fund, Inc., have ratified by their conduct the activities of the said U. Simpson Tate, Edwin C. Washington, Jr., A. Maceo Smith, and the other officers or members of the Defendants in all of the occasions mentioned herein.

15. That the investigation and examination made by the Attorney General of Texas and his authorized representatives did not constitute an unreasonable search and seizure under the Constitutions of the United States and of the State of Texas, and neither were any of the other Constitutional rights of any witness, party, officer, or other person infringed by the investigation of the Defendants herein.

16. That there has been no intimidation of any person, party, witness or officer of any of the Defendants herein by any representative of the Attorney General of Texas, the Department of Public Safety of the State of Texas, of any municipality of the State of Texas, or by any elected official within the State of Texas, with reference to the evidence adduced at the trial of this case or in any connection therewith.

17. That the Defendants, through their agents and employees, have violated Article 430, Vernon's Penal Code, relating to barratry, by the solicitation of students, parents of students, and other persons to bring lawsuits which were to be financed, sponsored, and maintained by the Defendants herein.

18. That the Defendants have violated the statutes of the State of Texas relating to political activities by a corporation by endorsing specific candidates

for official governmental positions in the State of Texas on both the local or state level.

19. That the refusal of the National Association for the Advancement of Colored People and the N.A.A.C.P. Legal Defense and Educational Fund, Inc., to allow the Attorney General or his authorized representatives to examine the books, records, and accounts of said corporations violates the provisions of Articles 1366 through 1371, Vernon's Civil Statutes.

Signed this the 7th day of June, 1957.

/s/ OTIS T. DUNAGAN,
Judge, Seventh Judicial District, Smith County, Texas.

Filed: June 7, 1957.
A true copy of the original:

THOMAS E. WALL,
District Clerk, Smith County, Tyler, Texas.

Mr. LIPSCOMB. We will let the record show that this particular document is certified as a true copy of the original, on the photostat, by the district clerk of Smith County, Tyler, Tex.

Judge Marshall, these findings and conclusions of the court are lengthy and voluminous, and at this time I do not care to read them into the record, but I would direct your attention to finding No. 5 which states:

That prior to the institution of this action the business transacted within the State of Texas by the National Association for the Advancement of Colored People was originally the same as that transacted in Texas by the NAACP Legal Defense and Educational Fund, Inc., and each constituted the alter ego of the other.

Now, No. 13:

That prior to the institution of this lawsuit, the activities of the NAACP Legal Defense and Education Fund, Inc., were so meshed, interrelated, and intertwined with the activities of the National Association for the Advancement of Colored People and its subordinate and auxiliary component organizations as to constitute said NAACP Legal Defense and Educational Fund, Inc., the alter ego of the said National Association for the Advancement of Colored People.

No. 14:

That prior to the institution of this lawsuit, the acts of the NAACP Legal Defense and Educational Fund, Inc., and its paid employees constituted the acts of the National Association for the Advancement of Colored People.

No. 15:

That the NAACP Legal Defense & Educational Fund, Inc., was cognizant of the activities of its agents and employees concerned in this lawsuit; that it acquiesced in such conduct, and thereby ratified it.

Judge, while we appreciate that you were both counsel and witness, contesting the above-stated petition upon which this finding was made, as a judge, is it your judgment that these findings were warranted by the evidence and exhibits introduced in the course of the trial?

Mr. MARSHALL. I would say, sir, that I cannot answer that question because, as a judge, I don't get this case.

The only connection I had with this case was as an advocate and as a lawyer, and I can give you my opinion.

Mr. LIPSCOMB. You were not a witness for the National Association for the Advancement of Colored People Legal Defense and Educational Fund?

Mr. MARSHALL. Yes; I was a witness for it.

Mr. LIPSCOMB. Right.

Mr. MARSHALL. But, as I understood your question, you asked me "as a judge."

Well, I can't pass on that as judge, but I can answer your question as a lawyer, which is what I was at this time.

Mr. LIPSCOMB. And as a lawyer you do still contest this finding?

Mr. MARSHALL. I do contest it because the record shows to the contrary.

Mr. LIPSCOMB. Did you appeal from this finding?

Mr. MARSHALL. No, sir.

Mr. LIPSCOMB. Was the appeal prosecuted?

Mr. MARSHALL. I said we did not appeal.

Mr. LIPSCOMB. Who is Hugh H. Simpson Tate and what was his relationship to you and the NAACP Legal Defense & Educational Fund at the time of this lawsuit?

Mr. MARSHALL. At the time of this lawsuit he was what we call a retained lawyer, which meant that we paid him a certain stipend monthly on an annual basis to represent us in the State of Texas, if we wanted any information or what have you.

Senator DIRKSEN. Was he domiciled in Texas?

Mr. MARSHALL. He was domiciled in Dallas, Tex. He is not now in Texas. He is in Oklahoma.

Mr. LIPSCOMB. What was the area of his representation insofar as geography is concerned?

Mr. MARSHALL. Louisiana, Texas, Arkansas, and Oklahoma, as I remember.

Mr. LIPSCOMB. I hand you a document which is designated as "Plaintiff's Exhibit No. 390" in the *Texas* case, which is a letter dated September 20, 1956, from you to Davis Grant, first assistant attorney general for the State of Texas, and I ask you if you will identify it.

Mr. MARSHALL. Yes; this appears to be the one. This appears to be the letter that was in evidence.

Senator JOHNSTON. That shall become a part of the record then and will be marked "Exhibit No. 2."

(Exhibit No. 2 follows:)

EXHIBIT NO. 2

(PLAINTIFF'S EXHIBIT NO. 390)

N.A.A.C.P. LEGAL DEFENSE AND EDUCATIONAL FUND, INC.,
107 West 43rd Street, New York 36, N.Y., September 20, 1956.

DAVIS GRANT, Esq.,
First Assistant Attorney General, Austin, Texas.

DEAR MR. GRANT: Pursuant to your request we have refused to make available to you and Mr. Harrison for your inspection the list of members—we do not have any members in Texas.

2. Contributors Lists: We feel that we cannot reveal our contributors lists without the permission of the individual contributors. We, however, have given the total income from Texas for the past two years. The only way we could get this figure was to run through the entire list of contributors and pick out those with Texas addresses. There is, of course, the barest possibility there might be one or two contributions that could have been missed, but we assure you that we have made every effort to get as close a statement as possible on the total income from Texas.

3. As to contracts, the only contract that we know of that we have would be a lease for our office space here in New York City.

4. Accounts: We permitted inspection of our General Ledger and the general journal and the auditor's reports. We could not, however, permit an inspection of the actual contributions and disbursements which were made by names which could not be revealed without permission of the persons involved. We

could not permit inspection of our general payroll because only one employee is in Texas, that is U. S. Tate, who is presently on the payroll for $6,104.00. When we first retained Mr. Tate, he desired to be classified as an employee in order to continue his social security, etc. However, it was decided that as of July 15th his status would be changed as to that of a retainer to bring him in line with the other lawyers outside of New York

As to our files, we find that our files are in horrible shape especially in view of the fact that we have been without a file clerk for several months. We have, however, made an effort to get typical cases from the files to show our relationship with U. S. Tate and cases within the State of Texas and to permit copies to be made thereof.

We have also permitted an inspection of our Minute Book.

Please be assured that we shall continue to cooperate in every manner possible with the state officials of Texas as well as the other states.

Very truly yours,

/s/ THURGOOD MARSHALL,
Director-Counsel.

TM : abs

(REPORTER'S NOTE.—Attached is photostat of listings of Officers, National League Committee and the Committee of 100, which was on the back of this letterhead.)

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The "Committee of 100," a voluntary cooperative group of individuals headed by Dr. Allan Knight Chalmers has sponsored the appeal of the NAACP Legal Defense and Educational Fund, Inc., since 1943, and has called for public subscription of $150,000 during 1956 to enable the Fund to put into operation a program designed to make desegregation a reality throughout the United States.

United States Postage, three cents.

N.A.A.C.P. Legal Defense & Educational Fund, Inc.,
107 43rd Street, New York 36, New York

Davis Grant, Esq.,
First Assistant Attorney General,
Austin, Texas

Mr. LIPSCOMB. You state in part in the letter to Mr. Grant:

We could not permit inspection of our general payroll—

this is on the second page——

Mr. MARSHALL. Yes, sir, I see it.

Mr. LIPSCOMB (continuing):

because only one employee is in Texas, that is U. S. Tate, who is presently on the payroll for $6,104.

When we first retained Mr. Tate, he desired to be classified as an employee in order to continue his social security, et cetera. However, it was decided that as of July 15 his status would be changed as to that of a retainer to bring him in line with the other lawyers outside of New York.

How do you differentiate between an employee of the fund and a retained lawyer of the fund?

Mr. MARSHALL. Well, the distinction was made to us by our tax adviser who advised us on tax problems.

And he said that we could not continue to carry him as an employee because he was actually on a retained basis.

And the other lawyers were on a retained basis and so for tax reasons and for tax reporting he would have to be put on that basis or let go.

That was the advice of our tax lawyer.

Mr. LIPSCOMB. What income, if any, and if you know, did U. S. Tate have, in addition to this stipend that he was paid by the Legal Defense and Educational Fund?

Mr. MARSHALL. I don't know the amount but he was in private practice and seemed to be making a decent amount of money.

I don't know how much. He had his own office, for example.

Mr. LIPSCOMB. At page 1663 to 1665 of the transcript of the oral testimony in this case you stated in regard to the relationship of Tate to the legal defense and educational fund and its policy that:

I am familiar—

and I am quoting—

with the policy. I have been with the organization ever since it was set up.

Insofar as Mr. Tate is concerned, we have regional counsel on a retainer in several areas of the country, and they are on retainer for the purpose of keeping

us advised of any possible violations of civil rights, particularly against Negroes in this area, and to apprise us of what the conditions are, and, if they are requested, to give help in any matter that is referred to my office, or, on the other side, if somebody writes to us and says they are being denied their rights because of racial color or in particular States such as Texas, we would refer this matter to Tate and tell him to make an investigation and report to us with his recommendations.

You were then asked this question:

After the report has been made to you, along with the recommendation, and you find it is the type of matter that the NAACP Legal Defense and Educational Fund, Inc., will render some legal service, aid, or assistance in what then do you do?

And your answer.

We first find if it is the type of case that comes within our general policy provisions. Then we find out whether they have money enough to help and if both answers are yes we then authorize Tate to render whatever help he can to the party.

And from then on the relationship is between the party at interest and Mr. Tate, as a lawyer.

And our policy specificaly provides that from then on his conduct is controlled solely by the canons of the American Bar Association.

And then this question:

Mr. Marshall, do you supervise Tate in his work after you have once turned the matter over to him and told him proceed?

You replied:

We don't supervise him. We request it. We give help if he wants research on a particular point or sometimes he will send the pleading or a brief and ask us to help on it, and we will put some of our people to work on it and send him down our suggestions, but the decision is between Mr. Tate and whomever he is helping.

At a later point this question was asked:

Mr. Tate is the only person that is employed on a retainer?

That is the only one and that is the reason we have him on a retainer so that if we need him he is available.

And a further answer:

There is nobody in the State of Texas authorized to represent the NAACP Legal Defense and Educational Fund except U. Simpson Tate.

Insofar as your relationship with Tate, as executive director and counsel of the legal defense and educational fund, is this a correct and accurate statement?

Mr. MARSHALL. It is not exectly accurate, I am afraid.

In the first place, in the early part you say that an investigation is made and if you find that the people have money. I think the statement was that if the people do not have money.

I imagine that was a typographical error.

And the second point is that, where you say "the only retained counsel." It is "only retained counsel in the area."

He is not the only retained counsel in the country.

Mr. LIPSCOMB. In the area?

Mr. MARSHALL. Yes; in the area. But with that, I can say that is the best I can do after a period of 5 or 6 years. I would say that was my testimony.

Mr. LIPSCOMB. I will repeat this because it is a little confusing here insofar as the money is concerned.

When we first find it is the type of case that comes within our general policy provisions then we find out whether they have money enough to help and if both answers are yes we then authorize Tate to render whatever help we can to the party.

Mr. MARSHALL. Yes.

Mr. LIPSCOMB. That was why——

Mr. MARSHALL. I am sure I said "if they did not have the money" because if they had the money they wouldn't need us.

Mr. LIPSCOMB. No, as between you and Tate, was there any subordinate employee or was that a direct chain of command?

Mr. MARSHALL. Oh, in the office we had a varying number of lawyers in the New York office, running up as high as six or seven, and he had contacts with the other lawyers in the office.

Mr. LIPSCOMB. Were they authorized to supervise and direct Tate's activities?

Mr. MARSHALL. Well, in the very loose sense of the word on this question of supervision—you realize that in our type of operation, at that time it was a very loose thing. It wasn't very rigid.

You cannot supervise a man and require him to do what you want on a couple of thousand dollars a year.

It was a cooperative deal for the most part. What I was trying to make clear in that case is that I did not want to appear to be escaping responsibility.

For example, Mr. Tate would telephone us sometimes. He would write a letter sometimes. Sometimes it was clear and sometimes it was not, and we would operate as best we could under the circumstances, recognizing that he was a good and competent lawyer.

Mr. LIPSCOMB. Did he stay in reasonably close contact with you in regard to his work?

Mr. MARSHALL. Not at all. We found out at that trial that in many cases he had we didn't know anything about them. He had taken them on his own.

Mr. LIPSCOMB. Are you acquainted with a Texas attorney named W. J. Durham?

Mr. MARSHALL. Yes; very well. I have known him for 20 years.

Mr. LIPSCOMB. What official relationship did he have with the NAACP or the NAACP Legal Defense and Educational Fund?

Mr. MARSHALL. Only on a case-by-case basis, which goes back to the — I have forgotten. Which was the first case.

I think it was the *Sweatt* case, but it was on a case-by-case basis.

He does have a position in the State conference of the NAACP. I don't know what his position is.

Mr. LIPSCOMB. Was W. J. Durham the original counsel for the complainant in the case of *Sweatt* v. *Painter*?

Mr. MARSHALL. Yes, sir.

Mr. LIPSCOMB. Did U. Simpson Tate participate in the *Sweatt* case during its course in the U.S. Supreme Court?

Mr. MARSHALL. I don't think so. It was W. J. Durham, W. B. Bunkley, and myself.

I don't think Tate was in it at all. He might have been in it after the——

Mr. LIPSCOMB. When did you first enter the *Sweatt* case as attorney of record?

Mr. MARSHALL. If I remember correctly, it was at the stage of amending the pleadings in the original action that Durham telephoned me or wrote me or something.

It was at the early stage.

Mr. LIPSCOMB. The early stages in the original trial?

Mr. MARSHALL. The early stage.

Mr. LIPSCOMB. Mr. Chairman, for the benefit of the record, *Sweatt* v. *Painter et al.*, 339 U.S. 629, denied June 5, 1950, is the case wherein the Supreme Court held that the petition of Sweatt was entitled to admission to the University of Texas and, pursuant to this decree, he was so admitted.

Mr. MARSHALL. He was admitted.

Senator DIRKSEN. Was this a Texas case? Are we now departing from the Texas case?

Mr. LIPSCOMB. No; this is the Texas case.

Judge Marshall, I hand you a document, designated as "Plaintiff's Exhibit No. 45" in the Texas case, and ask you if you will examine it.

Mr. Chairman, this document I would like to have entered in the record as exhibit 3, and it is a purported contract and agreement made between the Texas State Conference of Branches, NAACP, and signed by A. Maceo Smith, executive secretary, and Heman Marion Sweatt.

It provides in part:

It was agreed by and between A. Maceo Smith, acting for the NAACP, the late Dr. E. E. Ward, and W. J. Durham, acting for the Citizens Commitee, Dallas, Texas, and Heman Marion Sweatt, that said NAACP would contribute the amount of Heman Marion Sweatt's salary which was fixed and determined at the sum of $3,500 per year, making a total for Heman Marion Sweatt for a period of three (3) years in the sum of $10,500, and it was further agreed that an additional $500 would be given Heman Marion Sweatt by the Texas State Conference of Branches, NAACP, for unforseen contingencies and expenses, and that $500 of said money was to be paid immediately after the aforesaid agreement was made, which was during the month of July 1950; and

Whereas Heman Marion Sweatt was of the opinion that the amount which the Texas State Conference of Branches, NAACP, agreed to donate to him was the sum of $500 more than the amount of money hereinbefore set out, and it is the opinion and contention of the Texas State Conference of Branches, NAACP, that the above amount of money was the amount actually agreed upon, and in order to settle all differences of opinion, the Executive Committee of the Houston General Sweatt Security and Educational Fund Committee on the 21st day of January 1951 agreed to confirm said $11,000 referred to in this agreement and to add an additional $500 to said fund which is to be given and paid Heman Marion Sweatt in accordance with said agreement dated the 21st day of January 1951 and signed by the Executive Committee of the Houston General Sweatt Security & Educational Fund Committee and the said Heman Marion Sweatt.

The W. J. Durham, who is mentioned on page 1, is acting on behalf of the Citizens Committee of Houston, Tex., and is the same W. J. Durham who represented Sweatt throughout the course of this case?

Mr. MARSHALL. I would assume so. I know of no—the answer is, I know of no other W. J. Durham.

Mr. LIPSCOMB. You know of no other W. J. Durham in Texas who is a lawyer and who might have been connected with it?

Mr. MARSHALL. That is right. I assume it is the same W. J. Durham.

Mr. LIPSCOMB. Do you, of your own knowledge, know what the consideration was for the execution of this contract?

Mr. MARSHALL. I know absolutely nothing about that contract or didn't until a year or two after.

The first I heard about it was when Sweatt left the lawsuit. Now, if I had heard of it before, it would have been when somebody mentioned it or something.

I also know it was my understanding, as to this agreement, that the Texas people did not want anybody to have anything to do with it but the Texas people.

Mr. LIPSCOMB. Well, do you agree that this document simply represents the Texas State Conference of Branches, NAACP, taking over the contract which was originally entered into between the Citizens Committee of Dallas, Tex., and Heman Marion Sweatt?

Mr. MARSHALL. I can only interpret what I read. I do not have any--I do point out that this agreement, if I remember correctly, was after the decision, was it not?

I don't remember the date of the *Sweatt* decision but all I know about this is this: I have no independent recollection. This was strictly a Texas operation.

Mr. LIPSCOMB. Mr. Chairman, may that document be entered as exhibit No. 3?

Senator JOHNSTON. He has identified it as being true and correct? It may be.

Mr. MARSHALL. Yes, sir.

(Exhibit No. 3 follows:)

EXHIBIT No. 3

(PLAINTIFF'S EXHIBIT No. 45)

STATE OF TEXAS,
County of Dallas

Know all men by these presents:

Whereas The Texas State Conference of Brances, NAACP, is desirous of seeing and aiding Heman Marion Sweatt of legal eduction and support during the period of the time he is attending the Law School of the University of Texas, the following agreement is entered into by and between the Texas State Conference of Brances, NAACP, acting through A. Maceo Smith, Executive Secretary, and Heman Marion Sweat, to wit:

It was agreed by and between A. Maceo Smith, acting for the NAACP, the late Dr. E. E. Ward, and W. J. Durham, acting for the Citizens Committee, Dallas, Texas, and Heman Marion Sweatt, that said NAACP would contribute the amount of Heman Marion Sweatt's salary which was fixed and determined at the sum of $3,500.00 per year, making a total of Herman Marion Sweatt for a perioa of three (3) years in the sum of $10,500.00, and it was further agreed that an additional $500.00 would be given Heman Marion Sweatt by the Texas State Conference of Branches, NAACP, for unforeseen contingencies and expenses, and that $500.00 of said money was to be paid immediately after the aforesaid agreement was made, which was during the month of July 1950; and

Whereas, Heman Marion Sweatt was of the opinion that the amount which the Texas State Conference of Branches, NAACP, agreed to donate to him was the sum of $500.00 more than the amount of money hereinbefore set out, and it is the opinion and contention of the Texas State Conference of Branches, NAACP, that the above amount of money was the amount actually agreed upon, and in order to settle all differences of opinion, the Excutive Committee of the Houston General Sweatt Security and Educational Fund Committee on the 21st day of January, 1951, agreed to confirm said $11,000.00 referred to in this agreement and to add an additional $500.00 to said fund which is to be given

and paid Heman Marion Sweatt in accordance with said agreement dated the 21st day of January 1951, and signed by the Executive Committee of the Houston General Sweatt Security & Educational Fund Committee and the said Heman Marion Sweatt.

It is understood and agreed between the parties hereto that said agreement dated the 21st day of January, 1951, and signed by John Davis, Lullelia Harrison, Felton, Purnell, and Walter Powell, the members of the Executive Committee of the Houston General Sweatt Security & Educational Fund Committee and A. Maceo Smith, acting for the NAACP and Heman Marion Sweatt, acting in his individual capacity, is hereby made a part of this agreement, and that said agreement together with this agreement constitutes the full and complete agreement between the Texas State Conference of Branches, NAACP and Heman Marion Sweatt, and all other agreements, whether written or verbal, made by and between Heman Marion Sweatt and the Texas State Conference of Branches, NAACP are hereby merged in this contract and the contract hereinbefore referred to as having been made and dated on the 21st day of January 1951, by and between Heman Marion Sweatt and the Executive Committee of the Houston General Sweatt Security & Educational Fund Committee, and that all matters of fact heretofore in controversy between Heman Marion Sweatt and the officials of the Texas Conference of Branches of the NAACP are hereby settled and merged in this contract.

And it is hereby agreed between the parties hereto up to the date of signing this contract, that the NAACP has delivered to Heman Marion Sweatt through its officials, of its agents, representatives and associates, the sum of $3,087.34 which has already been applied on the $11,500 hereinbefore stipulated to be paid to Heman Marion Sweatt, and that the balance of said $11,500 shall be paid to the Heman Marion Sweatt in accordance with the terms of the contract signed by Heman Marion Sweatt and the members of the Executive Committee of the Houston General Sweatt Security & Educational Fund Committee.

Signed this the 23 day of January, 1951.

TEXAS STATE CONFERENCE OF BRANCHES, NAACP.

By: s/d A. Maceo Smith
A. MACEO SMITH,
Executive Secretary.

By: s/d Herman Marion Sweatt
HERMAN MARION SWEATT.

Witnesses:

s/d F. H. TUNNELL.
s/d DONALD JONES.

Mr. MARSHALL. Senator Johnston, if I may, I can vouch that this was an exhibit which was in the Tyler hearings. As to its authenticity, I cannot vouch for that.

Mr. LIPSCOMB. That is correct. I just say it shows on its face that it was taken from the hearings in the *Tyler* case.

Mr. MARSHALL. It was. I saw it there.

Mr. LIPSCOMB. Judge, I hand you now a document styled plaintiff's exhibit No. 46 in the *Texas* case, which I ask to have made a part of the record as exhibit No. 4, which purports to be the minutes of a meeting held on August 14 of an unstated year, for the purpose of formalizing the Texas State NAACP legal program for the immediate future.

The minutes indicate that the meeting was held in the office of Attorney W. J. Durham, and was attended by Mr. Durham and U. Simpson Tate, among others.

Mr. Chairman, I would like to read the entire substance of this document into the record.

Senator JOHNSTON. Proceed.

Mr. LIPSCOMB (reading);

Minutes of meeting held at 1:30 p.m., August 14th for the purpose of formalizing Texas State NAACP legal program for the immediate future. Meeting held in office of Attorney W. J. Durham, and attended by Mr. Durham, A. Maceo Smith, Dr. E. E. Ward, U. Simpson Tate, and Donald Jones.

As a prelude to the discussion of specific matters, it was unanimously agreed that Texas State NAACP legal program would be based in the future on the theory of an all-out, frontal attack on segregation. It was agreed, also, that the funds derived from the Sweatt Victory Fund Drive will be used (1) for the legal education and maintenance of Heman Marion Sweatt in the amount of $11,000; (2) that the remaining $49,000—

that "$49,000," I think, is a typographical error, and it should be "$39,000," but that is the way it appears here—

of the $50,000 fund would be devoted exclusively to the lawsuits herein set forth.

In order to counteract and rebut the opposition of Carter Wesley in the Sweatt Victory Fund Drive, an intensive publicity campaign, carried on in all other weekly papers servicing the state and explaining in detail the purposes of the Fund Drive, would be maintained. The Regional Secretary is to be responsible for such publicity. As a part of this campaign, Mr. Smith is to contact publisher Chester Franklin of the Kansas City Call with regard to that newspaper carrying a feature series of Heman Marion Sweatt. The Regional and State officers are to call attention of the branches throughout the state to the presence of this series.

Cases to be prosecuted with funds derived from the Sweatt Victory Fund Drive, with estimated costs, are as follows:

Completion of the La Grange Case already through the trial court—$2,500;

Prosecution of the Euless Case, now appealed by the defendants, $3,800;

Refiling and prosecution of either the Euless, Mineral Wells, or White Rock Cases for the purpose of seeking entry of Negro scholastics into the secondary school system now reserved for whites, $5,000;

The Texarkana Case amended to become a frontal attack on segregation and slanted to emphasize the Junior College Facilities involved, $5,000;

Tyler Park Case, set for trial Sept. 5th, $7,500;

Initial phases of attack on Jim Crow intrastate travel, $5,000;

A graduate level case to follow through on the Sweatt decision, $5,000;

A collegiate level case in education, $5,000;

Total, $39,000.

Mr. J. H. Morton of Austin is to be asked to search for an applicant to the University of Texas who is refused on the grounds that similar courses are offered at either Prairie View or TSUN.

Mr. W. Astor Kirk is to be asked to file again for admission to the University of Texas, if refused, he would be advised that resources are available to back any litigation he might desire to institute.

Citizens of the communities of Mansfield and Port Lavaca are desirious of filing lawsuits against their School Boards. These lawsuits involve issues already before the court in the Euless and other secondary school cases. It was decided that the Regional Special Counsel would attempt at this time to resolve the school problems in these communities by letter and probably negotiation, pending the final outcome of the other related cases now in court.

It was decided that the legal staff would proceed with the proposed San Antonio Vocational School Case. The focus of this case would be an attack on the vocational school issue alone, ignoring the rest of the public school system. It is understood that this case is to be financed entirely by the San Antonio community.

Were you acquainted with the minutes of this particular meeting, Judge?

Mr. MARSHALL. No, sir. I am not too certain as to when I first knew about it, but I think it was at the Tyler case.

Mr. LIPSCOMB. The W. J. Durham, again mentioned in this particular meeting insofar as you know is the same attorney who represented Sweatt?

Mr. MARSHALL. I would assume so.

Mr. LIPSCOMB. In Sweatt versus Painter?

Mr. MARSHALL. I would assume so.

Mr. LIPSCOMB. And, of course, U. Simpson Tate is unquestionably the regional special counsel for the NAACP Legal and Educational Fund?

Mr. MARSHALL. That depends on the date of this.

Mr. LIPSCOMB. There is no date.

Mr. MARSHALL. The reason I mention that is that at one time he held a dual position.

He worked for both organizations. That is the only reason I raise that point.

Mr. LIPSCOMB. What was that answer?

Mr. MARSHALL. At one time Tate represented both the NAACP and the Legal Defense Fund.

Mr. LIPSCOMB. How much did the NAACP pay him?

Mr. MARSHALL. I don't remember.

Mr. LIPSCOMB. Did they pay him?

Mr. MARSHALL. I think they did. I think they did.

Mr. LIPSCOMB. That is the NAACP, Inc., a New York corporation?

Mr. MARSHALL. This was years before—well, in the first place, the NAACP and the Legal Defense Fund, for several years after the inception of the Legal Defense Fund in 1940, had members of the staff that served on both organizations.

And, indeed, there were members of the board that were on the boards of both oragnizations, and in the early 1950's, and finally around 1955 or 1956, the organizations were completely separated to the point that the rule was established that no person could hold office in both organizations.

And I would think that, if I remember correctly, prior to 1954 or 1955 Tate did represent both, I think, but after 1955 he only represented one.

Senator HRUSKA. Mr. Chairman, would counsel yield?

I notice from the text of plaintiff's exhibit No. 46 the date is given or the time is given as 1:30 p.m., August 14, but at no place on there is there any year.

Mr. LIPSCOMB. I said that.

Senator HRUSKA. Well, is it evident from the text, from which this exhibit was taken, as to what year it might have been?

Mr. LIPSCOMB. I think that will be clarified in the next exhibits that we move to, Senator.

Senator HRUSKA. Thank you.

Mr. MARSHALL. I see it mentioned $11,000, which is in the exhibit that you just had.

Mr. LIPSCOMB. Yes, Judge, and there is a subsequent exhibit that will tie into it.

But, before we proceed with that, will you please explain, for the benefit of the committee, the legal station between the corporate organization of the NAACP, Inc., a New York corporation, and the NAACP Legal Defense and Educational Fund, Inc., a New York corporation?

Mr. MARSHALL. They are two separate corporations, completely separate, with separate facilities, separate books, separate everything,

and with absolutely no officer holding office in both, and no staff member holding a position in both.

They are completely separated.

Mr. LIPSCOMB. Why did you set up the NAACP Legal Defense and Educational Fund, Inc., as a separate corporation?

Mr. MARSHALL. When it was first set up?

Mr. LIPSCOMB. Why.

Mr. MARSHALL. A twofold reason: the first reason was the NAACP sought tax exemption, and it was denied on the ground that the NAACP participated in lobbying activities here in Washington.

Secondly, the idea was that the legal work of the—what shall I say—the Negro civil rights field should be separated from the general propaganda, et cetera.

There were two reasons, as I understand them. And when we first started out we even shared office space.

And then eventually we grew apart and grew apart until in the 1950's it was a complete separation, but we are not strangers.

Mr. LIPSCOMB. Do you recall at what time there was a complete separation?

Mr. MARSHALL. Approximately the period 1954 to 1956, in that period.

Mr. LIPSCOMB. On August 3, 1950, you directed a letter, in your capacity as special counsel for the NAACP Legal Defense and Educational Fund, to U. S. Tate, Esq., regional counsel, in which you said in part:

DEAR TATE: This will acknowledge your letter of July 31 concerning the raising of the $50,000 fund in Texas.

The letter from Tate to you does not appear as a part of the record.

Would it be possible for you to supply this committee the original of this letter from Tate to you, dated July 31, 1950?

I will hand you this.

Mr. MARSHALL. The way I file, sir, I just can't guarantee it—oh, I know about this. Oh, yes. Oh, yes. Yes, I know about this.

This was an effort that has been made in Texas over a period of years to set up a separate tax exempt legal defense fund to operate solely in Texas, solely under the control of Texas, and I took the position on that, substantially via tax and other lawyers that that could not be done legally.

If I remember, that was a strictly legal point. You see, they wanted to set up a separate corporation in Texas and get the same tax exemption that ourselves enjoyed, and we took the position that that was cutting the corner.

Mr. LIPSCOMB. The letter from you back to——

Mr. MARSHALL. Yes.

Mr. LIPSCOMB (continuing). Tate, which is on page 2 of the exhibit reads as follows:

DEAR TATE: This will acknowledge your letter of July 31 concerning the raising of the $50,000 fund in Texas.

Is it a fair statement that the $50,000 that we are referring to here on this letter of August 3, 1950, is the same $50,000 referred to in the preceding exhibit?

Mr. MARSHALL. Are the dates close? I didn't get the date of it.

Wait a minute, I have it here.

Mr. LIPSCOMB. The other exhibit was not dated.

Mr. MARSHALL. But the $11,000 one was.

The $11,000 one was January 1951. No, sir, because the first letter concerning the establishment of the Sweatt Fund, was the 23d of January 1951 and the $50,000 minute entry appears to include the $11,000 one, and all of that was—I would assume that was in 1951, and this is 1950 here.

Mr. LIPSCOMB. Would this mean that there was a $100,000 fund rather than $50,000 fund?

Mr. MARSHALL. No, sir. I don't know. The only thing I know is that we were asked could they set up this separate corporation.

Mr. LIPSCOMB. Well, let me read the letter and we will attempt to straighten the $50,000 fund out later. [Reads:]

If you set up such a corporation in Texas, you will still have to get tax exemption. This will take from 1 to 2 years because the rule of the Treasury Department is not to grant tax exemption of this type unless and until the corporation has been running a sufficient time to demonstrate that it is the proper type. There is no assurance that tax exemption will be granted even at the end of a reasonable time. I am reasonably certain that the Board would not be in favor of a separate corporation in Texas.

Therefore, it would be my suggestion that you organize a "Texas Committee of the N.A.A.C.P. Legal Defense and Educational Fund, Inc." This "Committee" would be set up along the lines as you are now thinking. When the "Committee" is in its formative stage it should then apply to the Board for recognition as the "Texas Committee" and I am reasonably certain that the Board would give recognition to such a committee, if it was properly organized and had its purposes stated as those are stated in our charter as follows:

"(*a*) To render legal aid gratuitously to such Negroes as may appear to be worthy thereof, who are suffering legal injustices by reason of race or color and unable to employ and engage legal aid and assistance on account of poverty.

"(*b*) To seek and promote the educational facilities for Negroes who are denied the same by reason of race or color.

(*c*) To conduct research, collect, collate, acquire, compile and publish facts, information and statistics concerning educational facilities and educational opportunities for Negroes and the inequality in the educational facilities and education opportunities provided from Negroes out of public funds; and the status of the Negro in American life.

"(*d*) The corporation shall not engage in any activities for the purpose of carrying on propaganda, or otherwise attempting to influence legislation, and shall operate without pecuniary benefit to its members."

It would, of course, have to be clearly understood that this "Committee" would be operating as an independent committee much along the same lines as the national outfit operates. Contributions to such "Committee" would, of course, be to the N.A.A.C.P. Legal Defense and Educational Fund, Inc.

Think this over and see if it is not more feasible and if so you can go to work on it, subject only to the approval of our Board, the Executive Committee of which will be meeting early in September.

Sincerely,

/s/ THURGOOD.

Was that suggestion ever made, Judge?

Mr. MARSHALL. I don't believe it ever was. I don't believe any action was taken on it.

Mr. LIPSCOMB. Referring to the same exhibit, the first entry on the exhibit is a letter dated August 4, 1950, to four designated individuals, written by U. S. Tate.

It starts:

Dear Friends:

Attached hereto is a reply from Mr. Thurgood Marshall, Special Counsel of NAACP, to a letter of inquiry sent to him by me, at your direction, seeking advise of him as to the efficacy of incorporating a fund in Texas to be known as "The NAACP Legal Defense and Educational Fund of Texas.

It occurs to me that his suggestion that we create a Committee of his fund is a feasible one that could be accomplished with dispatch and efficiency, and at the same time serve the defensive purpose which we seek.

It is my belief that to accomplish this end, we would complete our group as planned. We would then draw up a simple organizational structure, naming our committee members and stating our purpose and then apply to the National office for recognition under the present fund. Immediately after approval is had, we could then proceed to raise funds and get exemptions from the very beginning under the national fund.

If this is agreeable to you I should be pleased to proceed working with a small committee to draw up our plans.

Do you known whether those plans were ever drawn up?

Mr. MARSHALL. I am reasonably certain they were not.

The reason I am reasonably certain they were not was that not one single dollar of that fund ever come to the NAACP Legal Defense and Educational Fund in New York.

And the reason I am sure of it is because 2 years ago they promised to send their initial contribution and it hasn't arrived yet.

Mr. LIPSCOMB. Further reading from the same exhibit, on the last page appears a letter from one U. Simpson Tate, undated, to one Mr. Cunningham, which says:

Replying to your letter of October 31, concerning the *Winnsboro* suit, I wish to say that after the suit is filed we have no control over when it will be tried.

You will remember that the *Texarkana* case was filed on the same day your suit was filed. To date it has never been set for trial.

There is every indication that Judge Bryant does not want to try these lawsuits. If that is his attitude there is not a great deal that we can do about it.

As to your daughter, I would suggest that you advise your friends who are interested in your daughter, that they make their checks payable to: "The NAACP Legal Defense and Education Fund."

Send the check to me, and I will send the check to New York to the legal defense fund, and they in turn will send me a check for the same amount which I will return to you.

The receipt which will be issued by the fund for your check will be sent to the person who makes the contribution, and this will entitle him to full income tax deductions. You will not lose a penny in the deal. It is a roundabout way of doing it, but it is the only way I know of doing it.

I hope that this answers your question, if not please feel free to inquire further.

Mr. MARSHALL. This letter, I don't remember at all. I don't know whether the——

Mr. LIPSCOMB. And you say that this plan was never implemented?

Mr. MARSHALL. I said that my office——

Mr. LIPSCOMB. Insofar as the national office was concerned?

Mr. MARSHALL. That's right. And I say that Tate is absolutely wrong in saying that anybody can make a contribution to the legal defense fund solely for purposes of tax exemption in lieu of—in other words, using it for a funnel.

He is absolutely wrong. It cannot be done.

Mr. LIPSCOMB. Those were his words, Judge.

Mr. MARSHALL. I would assume they are. I can't vouch for it. I would assume they were his words and, had I known about it at the time, I would have said something about it at least, if not taken further action.

Mr. LIPSCOMB. Do you have any independent recollection of what the *Winnsboro* suit was?

Mr. MARSHALL. No, I do not. I would assume it to be a school case.

Mr. LIPSCOMB. The record in the *Texas* case indicates that the Legal Defense and Educational Fund of Texas was dissolved on May 3, 1953.

Mr. MARSHALL. Well, I wouldn't know about that.

Mr. LIPSCOMB. I hand you a document styled "Plaintiff's Exhibit No. 361" in the *Texas* case:

Minutes of the joint meeting of the Texas NAACP executive committee and the statewide membership campaign at 1718 Jackson Street, March 29, 1953.

The minutes stated are:

The Treasurer reported a total balance of $1,957.27 in the combined accounts. $435.63 in the account of the Texas Conference of Branches NAACP, and $1,521.64 in the account of the Legal Defense and Education Fund of Texas. A resolution was passed that "The NAACP Legal Defense and Education Fund be dissolved, and that the balance in the account be transferred to the account of the Texas Conference of Branches NAACP."

The $1,521.64, that was in the account of the Legal Defense and Educational Fund of Texas, did not represent any money that had been transferred from Texas to New York and sent back?

Mr. MARSHALL. No, sir; no connection at all that I know of.

This fund was operated solely by the people in Texas.

Mr. LIPSCOMB. You did write them a suggestion, however, that they might achieve a tax deduction on a contribution that would be made if they went through that?

Mr. MARSHALL. No. The plan that I suggested was that if they wanted to set up a committee, to aid the work of the NAACP Legal Defense Fund, they could set up such a committee.

They set up a committee to aid their own organization, not the legal defense fund; set it up independently of the legal defense fund and without any supervision and, indeed, I would say, knowledge of it.

If they had followed the plan that I suggested they would then have had an opportunity to have it aired out before our board of directors, with our tax lawyers, and others, to find out whether it was substantial or not.

They did not do that. They did what they started out to do, which was to organize a separate Texas operation.

And I do not see how we have any responsibility for it at all.

Mr. LIPSCOMB. Well, did you send down a plan for them to use in the letter that you wrote to Tate?

Mr. MARSHALL. And they did not use that plan.

Mr. LIPSCOMB. Further, from the minutes of this meeting:

Mr. Clouser reported on the existence of the Sweatt Education Fund in excess of $4,000, deposited in a Galveston Bank, of which Clouser, Dupre, and Davis are signatory trustees. After much discussion, the following Resolution was adopted:

Whereas a fund was created for the education of Norman Marion Sweatt at the Law School of the University of Texas; and

Whereas the subject of the Trust has failed, in that Sweatt is no longer a student at the University of Texas.

Be It Resolved, that the Texas Conference of Branches NAACP, beneficiary of the Trust, requests that the residue of the Fund be disposed of according to the Trust Agreement.

You knew nothing about the disposition of that particular fund?

Mr. MARSHALL. I am certain—this whole thing was deliberately kept as a Texas operation.

They didn't consult New York on it.

Mr. LIPSCOMB. But Hugh Simpson Tate was your subordinate at this time, was he not, as regional counsel?

Mr. MARSHALL. Not at this meeting. He was also an officer of the State conference of NAACP. He did not—well, I will put it this way.

He did not attend this meeting by any authorization of mine or anybody in the legal defense fund office, and was not authorized to represent us or even as an observer.

Mr. LIPSCOMB. Mr. Chairman, I would like to have these documents marked respectively as I referred to them as "Exhibits 4, 5 and 6," and entered in the record at this point.

Senator JOHNSTON. They will become a part of the record and will be known as exhibits 4, 5, and 6.

(The documents referred to, exhibits 4, 5, and 6, follow:)

EXHIBIT No. 4

(PLAINTIFF'S EXHIBIT No. 46)

CONFIDENTIAL

Minutes of meeting held at 1:30 P.M., August 14th, for the purpose of formalizing Texas State NAACP legal program for the immediate future. Meeting held in office of Attorney W. J. Durham and attended by Mr. Durham, A. Maceo Smith, Dr. E. E. Ward, U. Simpson Tate, and Donald Jones.

As a prelude to the discussion of specific legal matters, it was unanimously agreed that Texas State NAACP legal program would be based in the future on the theory of an all-out frontal attack on segregation. It was agreed, also, that the funds derived from the Sweatt Victory Fund Drive will be used (1) for the legal educational and maintenance of Heman Marion Sweatt in the amount of $11,000.00; (2) that the remaining $49,000.00 of the $50,000.00 fund would be devoted exclusively to the lawsuits herein set forth.

In order to counteract and rebut the opposition of Carter Wesley in the Sweatt Victory Fund Drive, an intensive publicity campaign, carried on in all other weekly papers servicing the State and explaining in detail the purposes of the Fund Drive, would be maintained. The Regional Secretary is to be responsible for such publicity. As a part of this campaign Mr. Smith is to contact publisher Chester Franklin of the Kansas City Call with regard to that newspaper carrying a feature series of Heman Marion Sweatt. The Regional and State officers are to call attention of the branches throughout the state to the presence of this series.

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Initial phases of attack on Jim Crow intrastate travel	5,000
A graduate level Case to follow through on the Sweatt Decision	5,000
A collegiate level Case in education	5,000
Total	$38,000

Mr. J. H. Morton, of Austin, is to be asked to search for an applicant to the University of Texas who is refused on the grounds that similar courses are offered at either Prairie View or TSUN.

Mr. W. Astor Kirk is to be asked to file again for admission to the University of Texas and, if refused, he would be advised that resources are available to back any litigation he might desire to institute.

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It was decided that the legal staff would proceed with the proposed San Antonio Vocational School Case. The focus of this case would be an attack on the vocational school issue alone, ignoring the rest of the public school system. It is understood that this case is to be financed entirely by the San Antonio community.

EXHIBIT No. 5

(PLAINTIFF'S EXHIBIT No. 72)

AUGUST 4, 1950.

Dr. E. E. Ward
2700 Flora Street
Dallas, Texas

Dr. J. J. Rhoads, President
Bishop College
Marshall, Texas

Mr. A. Maceo Smith, Secretary
Texas State Conference of NAACP
2011 North Washington Street
Dallas, Texas

Mr. Donald Jones, Regional Secretary
Southwest Region of NAACP
Office

Dear FRIENDS: Attached hereto is a reply from Mr. Thurgood Marshall, Special Counsel of NAACP, to a letter of inquiry sent to him by me, at your direction, seeking advise of him as to the efficacy of incorporating a fund in Texas to be know as "The NAACP Legal Defense and Educational Fund of Texas."

It occurs to me that his suggestion that we create a Committee of his fund is a feasible one that could be accomplished with dispatch and efficiency, and at the same time serve the defensive purpose which we seek.

It is my belief that to accompish this end, we would complete our group as planned. We would then draw up a simple organizational structure, naming our committee members and stating our purpose, and then apply to the National office for recognition under the present fund. Immediately after approval is had, we could then proceed to raise funds and get exemptions from the very beginning under the national fund.

If this is agreeable to you I should be pleased to proceed working with a small committee to draw up our plans.

Sincerely yours,

/s/ U. S. Tate
U. SIMPSON TATE,
Regional Special Counsel.

UST: bg

N.A.A.C.P. LEGAL DEFENSE AND EDUCATIONAL FUND, INC.,
20 West 40th Street, New York 18, N.Y., August 3, 1950.

U. S. TATE, Esq.,
Regional Special Counsel
1718 Jackson Street
Dallas 1, Texas.

DEAR TATE: This will acknowledge your letter of July 31st concerning the raising of the $50,000 fund in Texas. If you set up such a corporation in Texas, you will still have to get tax exemption. This will take from one to two years

because the rule of the Treasury Department is not to grant tax exemption of this type unless and until the corporation has been running a sufficient time to demonstrate that it is the proper type. There is no assurance that tax exemption will be granted even at the end of a reasonable time. I am reasonably certain that the Board would not be in favor of a separate corporation in Texas.

Therefore, it would be my suggestion that you organize a "Texas Committee of the N.A.A.C.P. Legal Defense and Educational Fund, Inc." This "Committee" would be set up along the lines as you are now thinking. When the "Committee" is in its formative stage it should then apply to the Board for recognition as the "Texas Committee" and I am reasonably certain that the Board would give recognition to such a committee, if it was properly organized and had its purposes stated as those are stated in our charter as follows:

"(a) To render legal aid gratuitously to such Negroes as may appear to be worthy thereof, who are suffering legal injustices by reason of race or color and unable to employ and engage legal aid and assistance on account of poverty.

"(b) To seek and promote the educational facilities for Negroes who are denied the same by reason of race or color.

"(c) To conduct research, collect, collate, acquire, compile and publish facts, information and statistics concerning educational facilities and educational opportunities for Negroes and the inequality in the educational facilities and education opportunities provided from Negroes out of public funds; and the status of the Negro in American life.

"(d) The corporation shall not engage in any activities for the purpose of carrying on propaganda, or otherwise attempting to influence legislation, and shall operate without pecuniary benefit to its members."

It would, of course, have to be clearly understood that this "Committee" would be operating as an independent committee much along the same lines as the national outfit operates. Contributions to such "Committee" would, of course, be to the N.A.A.C.P. Legal Defense and Educational Fund, Inc.

Think this over and see if it is not more feasible and if so you can go to work on it, subject only to the approval of our Board, the Executive Committee of which will be meeting early in September.

Sincerely,

/s/ Thurgood
THURGOOD MARSHALL,
Special Counsel.

TM: abs.
cc: R. Smith, W. White.

NOVEMBER 2, 1950.

Mr. FORREST CUNNINGHAM,
Box 221,
Winnsboro, Texas.

DEAR MR. CUNNINGHAM: Replying to your letter of October 31, concerning the Winnsboro suit, I wish to say that after the suit is filed we have no control over when it will be tried.

You will remember that the Texarkana case was filed on the same day your suit was filed. To date it has never been set for trial.

There is every indication that Judge Bryant does not want to try these law suits. If that is his attiude there is not a great deal that we can do about it.

As to your daughter, I would suggest that you advise your friends who are interested in your daughter, that they make their checks payable to: The NAACP Legal Defense and Education Fund.

Send the check to me, and I will send the check to New York to the Legal Defense Fund, and they in turn will send me a check for the same amount which I will return to you. The receipt which will be issued by the fund for your check will be sent to the person who makes the contribution, and this will entitle him to full income tax deductions. You will not lose a penny in the deal. It is a roundabout way of doing it, but it is the only way I know of doing it.

I hope that this answers your question, if not please feel free to inquire further.

Sincerely yours,

U. SIMPSON TATE.

UST: bg.

EXHIBIT No. 6

(PLAINTIFF'S EXHIBIT No. 361)

MINUTES OF THE JOINT MEETING OF THE TEXAS NAACP EXECUTIVE COMMITTEE AND THE STATEWIDE MEMBERSHIP CAMPAIGN AT 1718 JACKSON STREET, MARCH 29, 1953

Persons present: Jones, Smith, Clouser, Tate Flaner, Price, Craft, Lewis, McKinney, Terry.
Regrets: Smith, Roberson, Durham, Hall.

This meeting being duly called by President Jones, a quorum was declared, and the meeting opened with prayer by J. H. Clouser. Minutes of the previous meeting were read and adopted.

The Treasurer reported a total balance of $1,957.27 in the combined accounts. $435.63 in the account of the Texas Conference of Branches NAACP, and $1,521.64 in the account of the Legal Defense and Education Fund of Texas. A resolution was passed that "The NAACP Legal Defense and Education Fund be dissolved, and that the balance in the account be transferred to the account of the Texas Conference of Branches NAACP." Mr. Clouser reported on the existence of the Sweatt Education Fund in excess of $4,000, deposited in a Galveston Bank, of which Clouser, Dupre and Davis are signatory trustees. After much discussion, the following Resolution was adopted:

Whereas, a fund was created for the education of Norman Marion Sweatt at the Law School of the University of Texas, and

Whereas, the subject of the Trust has failed, in that Sweatt is no longer a student at the University of Texas.

Be it resolved, that the Texas Conference of Branches NAACP, beneficiary of the Trusts, requests that the residue of the Fund be disposed of according to the Trust Agreement."

Mrs. J. B. Craft raised the question as to the responsibility of the Texas NAACP regarding the residual bequest contained in the will of her late father. It was agreed that no responsibility exists at the present time.

John W. Flanner, Field Representative of the National Office, was introduced, and a discussion was entered as to agreements reached between the National Office and the Texas NAACP regarding Mr. Flanner's duties during a period not to exceed seven months, dating from March 15th. It was agreed that Mr. Flanner should work in the following areas of responsibility:

1. Promotion of a Statewide Membership Campaign on a $20.00 goal. A budget of $500 was approved to supplement the Regional Office and the Branches on items of travel and postage.
2. Recommendation of a full time State Field Secretary to be installed.
3. Promotion of a Statewide Finance Campaign for a budget of $18,000.00.
4. Organize and lead the delegates into the National Convention with appropriate competitive enthusiasm against other regions.

A full discussion of plans for the Statewide Membership Campaign commencing April 1st and continuing through June 15th was entered. Approval of general plans was given with Mr. George W. Flemmings serving as State Campaign Director, with John Flanner as Campaign Director. Wm. F. McKinney was appointed as State Director of Publicity for the membership and finance campaigns. Motion was passed to allot a budget of $250 for promotion of requisite publicity for the campaigns.

In this connection, it was voted that a brochure be printed, highlighting the membership campaign. It was also voted that $75 be immediately advanced to Mr. McKinney to get going on rerequsite publicity items.

It was voted by the Executive Committee that annual reports of Finance and achievements from local Branches be instituted, and that the fiscal year for such reports run from August 31st through to September to 1st of the following year. It was VOTED that appropriate forms be provided and sent to the Branches for this purpose.

It was VOTED that membership reports from Branches during the campaign be made in triplicate so that one copy may be filed in the State Office.

It was VOTED that membership reports from Branches during the campaign be made in triplicate so that one copy may be filed in the State Office.

It was VOTED that plans be instituted to provide a uniformed system of transportation for delegates going to the St. Louis National Convention. It was suggested that Mr. Flanner seek rates, et cetera, from public carriers in this connection.

Motion prevailed and carried that, "The Texas NAACP endorse and support pending House Bill 216 and Senate Bill 24 to increase teachers salaries in the State, and that Mr. Tate shall file a petition of support with House leaders, Senate leaders and the Governor."

It was also VOTED that the Secretary shall continue efforts to achieve full cooperation with the Colored Teachers State Association of Texas in regards to continued financial aid to the NAACP.

It was VOTED that the Statewide finance drive under the direction of Dr. H. Boyd Hall shall commence June 1st, and run through August 1st. Plans for the conduct of this drive shall be immediately made with appropriate prospect lists assembled immediately.

It was VOTED that the next meeting of the Executive Committee, along with State Finance Campaign leaders, and Statewide Membership Campaign leaders, be held around May 3rd, 1953. The meeting adjourned at 2:30 P.M.

JNO. J. JONES, *Chairman.*
/s/ AMS
A. MACEO SMITH, *Secretary.*

Mr. LIPSCOMB. Judge Marshall, in the latter part of 1956, was your NAACP Legal Defense and Educational Fund, Inc., under an investigation or an examination by the Bureau of Internal Revenue to determine whether or not its operation was in compliance with the tax deductible contributions that could be made to this particular character or kind of corporation?

Mr. MARSHALL. If I remember correctly, sir, we have been under a continuing investigation by the Department of Internal Revenue for at least 6 or more years.

Mr. LIPSCOMB. You mean 6 or more years from the early 1950's, or at the present time?

Mr. MARSHALL. 1954 or 1955 and—well, when I left the legal defense fund the understanding was that we were still under investigation.

They have gone—while I was there they had gone through so far for a period of 6 or more years to examine every single check that was issued, and every single receipt.

Mr. LIPSCOMB. Well, what were the nature of the difficulties that you were confronted with over this period of time?

Mr. MARSHALL. So far as the Internal Revenue was concerned?

Mr. LIPSCOMB. Yes.

Mr. MARSHALL. Of explaining our operations. We had several conferences and we explained what we do and how we operate.

There has been an independent investigation along the same lines.

Mr. LIPSCOMB. When did you have a complete divorcement from the NAACP as a corporation and the interlocking officers and——

Mr. MARSHALL. Between 1954 and 1956, in that area.

Mr. LIPSCOMB. At one time you occupied the same quarters?

Mr. MARSHALL. We were in the same office building, and the Legal Defense Fund leased space from the NAACP in the same office building, using the same switchboard.

Mr. LIPSCOMB. When you were executive director and counsel for the Legal Defense and Educational Fund, what was your title in the NAACP?

Mr. MARSHALL. Special counsel.

Mr. LIPSCOMB. And what was Mr. Wilkins' position in the Legal Defense and Educational Fund?

Mr. MARSHALL. He was secretary of both, if I remember correctly. I think he was secretary of both, and Mr. Spingarn was president

of both, and then there was at least half a dozen directors on both groups.

Mr. LIPSCOMB. Was Mr. Wilkins paid——

Mr. MARSHALL. Yes, sir.

Mr. LIPSCOMB (continuing). Anything from the Legal Defense and Educational Fund?

Mr. MARSHALL. Yes, sir; a small amount. Very small.

Mr. LIPSCOMB. In your oral testimony in the trial of the *Texas* case, at page 1695 of the record of the hearings you were asked whether or not you knew the NAACP had a representative in Washington who maintained the Washington bureau, and you replied that Clarence Mitchell was the director of the Washington bureau.

And you were then asked this question:

Are you familiar with the sign on his door, if he has one?
Do you recall what appears on that door?

Your reply was:

No; I truthfully cannot say.

And you still have no intimate knowledge of what was on Mr. Mitchell's door——

Mr. MARSHALL. No; I don't.

Mr. LIPSCOMB (continuing). At this time? At that point in your testimony this colloquy took place between counsel:

Mr. DURHAM. Your Honor, I want to get this. I want to ask the State, are we called upon to defend against every and all of the violations of Federal laws?

It is not in the pleadings, and the fact there is an office in Washington—there might as well be one in London.

We are charged with violating the Texas laws, and that is what we came here prepared to defend. Now, we are required to defend against the Federal—a violation of Federal law in Washington.

And Mr. Grant interjected, and he was the attorney representing the State of Texas:

If the court please, this is exactly the same objection counsel Durham has lodged on several occasions, and it is my opinion it is the subject of exceptions to our amending the original petition. He has not filed any exceptions to this petition.

And then Mr. Durham:

And now, Your Honor, it is charged that we have violated the Texas law, and I know of no Texas laws that will operate in Washington.

We would have to bring witnesses from Washington if we are going into that and allege violations of Federal law in Washington. We came here prepared to defend against what they charged us with.

Do you have any idea, Judge, as to what that controversy was about insofar as this door was concerned?

Mr. MARSHALL. No, sir; not in the least.

Are you looking for Clarence?

Mr. LIPSCOMB. I was looking to see if Mr. Mitchell was here so we could resolve that.

Mr. MARSHALL. He was here.

Mr. LIPSCOMB. That is all right.

Senator DIRKSEN. Mr. Chairman, may I inquire at this point?

I suspect that counsel has a very substantial number of exhibits, and I must go to the floor.

Is it the intention of the chairman that we will resume this afternoon?

Senator JOHNSTON. At this particular point I do not know.

Senator DIRKSEN. Well, it is quite evident that counsel has not nearly finished his interrogation. I wonder if counsel would like to acquaint me with exactly what he is trying to establish here.

Would it affect judicial temperament, legal competence, or integrity, as those are the attributes that are taken into consideration?

Mr. LIPSCOMB. The Texas court, Senator, in this particular case, as you will note from the findings of fact and conclusions of law which are voluminous, has held in no uncertain terms that both the NAACP and the NAACP Legal Defense and Education Fund were guilty of the unlawful practice of law in Texas, were guilty of soliciting and fomenting litigation, were guilty of operating in Texas without the license that is required by Texas law for foreign corporations doing business in Texas, and under the testimony, as adduced in this case, that it was impossible to differentiate between any one of the many things and that the officers and employees of these corporations were charged with the same identical knowledge as to what was going on in Texas, and the corporations themselves were so found guilty;

That the Canons of Ethics of the American Bar Association had been violated.

And it is my purpose to show that Judge Marshall, either by active or constructive knowledge, is charged with the responsibility for everything that was found by this court in Texas from the appeal that was taken.

Senator DIRKSEN. Well, I gather from that one finding that you recited orally that that appeared a presumption on the part of the presiding judge, that he inferred or he assumed that these organizations were in an intertwined circumstance, but Judge Marshall testifies that there was a complete separation of the two.

Mr. MARSHALL. Yes, sir.

Mr. LIPSCOMB. That is directly contrary to the findings of the Texas court.

And I might add that it is also contrary to a later finding, inferentially, of the Supreme Court of the State of Virginia in the case of *NAACP* v. *Harrison*, which will be later referred to.

Mr. MARSHALL. Which case, if I may beg your pardon, is in the Supreme Court?

Mr. LIPSCOMB. That is correct, with a different name.

Senator HRUSKA. Will counsel yield?

What was the nature of that Texas suit? Was it criminal or civil?

Mr. LIPSCOMB. *Sweatt* v. *Painter*?

Senator HRUSKA. Well, the one in Texas.

Mr. LIPSCOMB. Oh, the Texas case here is a civil action, sir, directed against these named defendants.

Senator HRUSKA. Was Judge Marshall a party to the suit?

Mr. LIPSCOMB. He was not named as a defendant. He appeared as a witness for the NAACP Legal Defense and Educational Fund.

No, sir, he was not named as a party.

Senator KEATING. Well, Mr. Chairman, may I make a comment, that we are not here concerned with investigating the NAACP.

We are here concerned with the investigation of the qualifications of this nominee, as to his character, ability, and integrity, to be a U.S. circuit judge.

Senator JOHNSTON. That is true, but at the same time the question is before this committee as to whether or not, in his activities and as a witness and as an attorney for the NAACP, just what he has done in that line.

Senator KEATING. Well, we could spend the rest of this session doing nothing but examining and investigating the NAACP, and I would hope that counsel would make more progress than he has up to the time or up to date.

Senator JOHNSTON. I think when he brings in the Virginia case and ties in the two you will see the connection in the two cases.

Senator HRUSKA. Mr. Lipscomb, there are many findings in this findings of facts and conclusions of law in this State of Texas against the NAACP.

I have not had time to read them all, but I am wondering if the Texas court also indulged in the finding that Judge Marshall had any "active or constructive" notice of the improper actions which he found to have existed or transpired there.

Mr. LIPSCOMB. To the extent that all of the agency employees of the named corporations were so found, he was a principal agent and employee of the Legal Defense and Educational Fund.

Senator HRUSKA. Is there a finding in the court's docket to that effect?

Mr. LIPSCOMB. Yes, sir.

Senator HRUSKA. Could you direct our attention to it and its exact language?

Mr. LIPSCOMB. Yes, sir.

Senator HRUSKA. What is its number?

Mr. LIPSCOMB. I will have to look through here; 15 is the first one.

Senator HRUSKA. Will you read it?

Mr. LIPSCOMB (reading):

That the NAACP Legal Defense and Educational Fund, Inc., was cognizant of the activities of its agents and employees concerning this lawsuit; that it acquiesced in such conduct and thereby ratified it.

Senator HRUSKA. Well, but that does not say that Judge Marshall had any active or constructive notice of anything.

It finds that the organization, as such, had knowledge of the acts of its agents and employees, but that does not find that Judge Marshall had any active or constructive notice, does it, sir?

Mr. LIPSCOMB. Only to the degree that someone in a corporation, Senator, has to be the responsible individual, as a corporation cannot stand by itself insofar as knowledge and acquiescence is concerned.

So you must turn to the officer of that corporation who is responsible for its direction.

Senator HRUSKA. He will, of course. Inferentially, you might get that, but my specific question was, and after all we are interested in Judge Marshall's part in this, whether there is a finding by the Texas court that Judge Marshall had actual or constructive notice of the improper action which the court found.

Mr. LIPSCOMB. Insofar as Judge Marshall personally is concerned, his name does not appear.

Senator HRUSKA. Well, that answers my question.

Mr. LIPSCOMB. Fine, sir.

Senator DIRKSEN. Judge, is the allegation of barratry—incidentally, which is something which I have not heard since I got out of law school—is that involved in some of these other cases?

Mr. MARSHALL. If the other case that counsel is talking about is the Virginia case it did involve barratry and what the peculiar language of the Virginia statute called "running and capping."

Senator KEATING. Called what?

Mr. MARSHALL. Running and capping. I do not feel bad, Senator Keating. We have been unable to find anybody who knows what it means yet.

But the two points that are involved, or the sum and substance of both of them, are in that field.

Senator KEATING. May I ask a question?

Is that case now pending in the Supreme Court of the United States?

Mr. MARSHALL. The portion of the Virginia case was argued by the lawyer for the NAACP, Mr. Carter, last November, I think.

And it has been set down for reargument in the next term without decision.

Senator KEATING. There has been no decision as yet?

Mr. MARSHALL. Not on that point.

Senator KEATING. May I ask if it is the intention of counsel to go into a case that is now pending in the Supreme Court?

Mr. LIPSCOMB. The Supreme Court of Virginia has rendered a final judgment in this case, I think.

Senator KEATING. Well, Mr. Chairman, I would protest vehemently going into any case in these open hearings which is now pending before the Supreme Court of the United States.

In my judgment it would be highly improper.

Mr. LIPSCOMB. My only purpose, insofar as that case is concerned, is to cite the language of the case or of the court in making its findings in this particular case and substantiate other testimony in the record as it was given at the original trial of the case.

Senator JOHNSTON. I do not think that counsel is going to try to pretend that that Supreme Court of Virginia was right or wrong.

The only thing is you are just going to present the facts.

Mr. LIPSCOMB. That is right.

Senator JOHNSTON. That is as you find them, to the committee and then——

Senator KEATING. Well, Mr. Chairman, he certainly has been contending, about the Supreme Court of Texas, that they were right and that everything they have said must be gospel.

That has been his attitude all the way through.

Mr. MARSHALL. The first case was before a three-judge Federal court, Judge Soper, Judge Hoffmann, and, if I remember correctly, Judge Hutchinson, and it was brought by the NAACP and the NAACP Legal Defense against the constitutionality of the running and capping and other statutes.

Judge Soper, in a majority opinion, a 2-to-1 opinion, ruled that three of the statutes were unconstitutional, and he said he would not rule on the other two but said he would leave those to the State courts to first interpret.

We applied for certiorari and, after a full argument of the case, the Supreme Court took the position that the three-judge District Court should abstain from deciding the case until the statutes had been interpreted by the State court, and then action to file a declaratory judgment is up to the State court.

Those are the two appeals that I remember.

Senator HART. Mr. Chairman, I appreciate your willingness to let me sit in on this although I am not a member of the subcommittee.

I made the request that you kindly granted only because I have an intense interest in seeing this nominee made a full member of the Federal Judiciary.

I think we are talking about a man whose professional life is just as open and above board as any Member of this Senate. I would inquire as to how large or how long, in the judgment of counsel and based upon the 2-hour experience that we have had this morning or hour and a half, how long he expects will be required to make the record that he desires?

Senator JOHNSTON. I do not know whether I can speak for him or not, but I doubt whether or not he knows.

In questions and answers you never know when you get into a subcommittee how long it is going to go on.

Senator KEATING. You surely do not.

Senator HART. I wonder what his estimate is.

Mr. LIPSCOMB. Oh, a maximum of 2 or 3 hours.

Senator HART. In addition to the hour and a half that we have had?

Mr. LIPSCOMB. Right.

Senator HART. I think this is helpful to all of us.

Senator JOHNSTON. It is now 12 o'clock, and we have a 12 o'clock call. So we will adjourn the subcommittee until the call of the chair.

Senator KEATING. Has the time been fixed, Mr. Chairman, for——

Senator JOHNSTON. No, it has not. The subcommittee is adjourned.

Mr. MARSHALL. Well, Mr. Chairman, would it possibly be tomorrow? I wonder whether I should stay over or not.

Senator JOHNSTON. Well, not tomorrow. I can tell you that right now.

Mr. MARSHALL. Well, I would like to get back to my work. That is the only reason——

Senator JOHNSTON. It will not. We will notify you in advance. We will arrange it as early as possible.

The committee is adjourned.

(Whereupon, at 12:03 p.m., the subcommittee was adjourned, subject to the call of the chair.)

NOMINATION OF THURGOOD MARSHALL

WEDNESDAY, AUGUST 8, 1962

U.S. SENATE,
SUBCOMMITTEE ON NOMINATIONS OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee (composed of Senators Johnston, McClellan, and Hruska) met, pursuant to call, at 10:30 a.m., in room 2228, New Senate Office Building, Senator Olin D. Johnston presiding.

Present: Senator Johnston (presiding).

Also present: Senators Hart, Carroll, and Keating.

L. P. B. Lipscomb, Esq., member of the professional staff, Committee on the Judiciary.

Senator JOHNSTON. The subcommittee will be in order. The hearing will be resumed by the meeting of this subcommittee now on the nomination of Thurgood Marshall to be U.S. circuit judge for the second circuit.

We did get permission to sit this morning until 12 o'clock, although the Senate is in session. I objected to meeting while the Senate is in session, and I made a statement on the floor to that effect. I did not object to meeting today from 10:30 to 12. Senator Mansfield has given this subcommittee on the nomination of Thurgood Marshall permission to meet for only 1 hour while the Senate is in session. The Senate, as you know, meets at 11 o'clock this morning.

STATEMENT OF HON. KENNETH B. KEATING, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator KEATING. That is my recollection of the position you took when you made the unanimous consent request the day before.

I was not on the floor when this was made.

Senator JOHNSTON. I was not either.

Senator KEATING. But I understand your position even though I disagree with you. In other words, I see no more reason why the full committee should sit during the session when this subcommittee cannot.

If the chairman would yield me 1 minute before we conclude, no more than 1 minute, I would like to make a statement.

Senator JOHNSTON. I would like to make a statement right here and now that I have talked with our counsel here and he thinks that the questioning, if we do not finish today, will be completed at the next hearing, and I agree.

I might say that we will have our next hearing just as quickly as we can set it up. It will not interfere with the hearings I am having

on Tuesday and Thursday concerning the rate bill which I have to be present on, and if the Judiciary Committee does not meet, then this subcommittee will meet on Monday.

Senator KEATING. But if the full Judiciary Committee does not ment next Monday, can we have it on Monday?

Senator JOHNSTON. We can meet next Monday. If we do not meet on Monday, I will try to arrange it, if it suits the judge's convenience, to meet on Monday.

Senator KEATING. Could I ask the Senator whether he would object to the committee meeting during the session of the Senate on either Monday or Wednesday?

Senator JOHNSTON. I think we should do it without them meeting. I do not know what is coming up in the Senate.

Senator KEATING. I can tell you what is coming up.

Senator JOHNSTON. I do not want to get behind the eight ball, so to speak.

Senator KEATING. As we are prety well assured, it will be the communications satellite bill next week, and the Senate will meet at 10 o'clock every morning until that bill is completed.

Senator JOHNSTON. I will not object to the committee meeting while the Senate is in session, provided that we meet like we are this morning, from 10:30 until 12 noon. That takes in the morning hours.

I think you can understand my position. We do have resolutions, bills, and short speeches by the Senators in the first hour and a half anyway.

STATEMENT OF HON. JOHN A. CARROLL, A U.S. SENATOR FROM THE STATE OF COLORADO

Senator CARROLL. Will the Senator yield?

Senator JOHNSTON. Yes.

Senator CARROLL. These hearings have been going on for a long period of time, from time to time.

As a member of the Senate Judiciary Committee, but not a member of this subcommittee, I have come here this morning to make a statement that I would like to make, but before I make the statement, I wish to ask a question and then make my observation.

If the meeting this morning is to go on until noon, can the chairman give us some idea how much longer these hearings will continue?

Senator JOHNSTON. That is what I stated a few moments ago. I thought we would be able to complete them in one more morning.

Senator CARROLL. Let's ask the counsel.

Senator JOHNSTON. He is assigned from the full committee down to this subcommittee for these hearings.

Mr. LIPSCOMB. It is very difficult to say until we see how much ground we cover this morning.

Senator CARROLL. I think the chairman of this subcommittee ought to set the time rather than the counsel.

If the chairman says he can do this in another morning, that will be satisfactory.

If I might proceed for just a short time because we are also working on the drug bill in the full committee and I will not take too much time.

I appear here this morning in behalf of the nomination of Thurgood Marshall. Many years ago when Howard McGrath was the Attorney General, I happened to be in the Supreme Court of the United States for a very important case which was under discussion and consideration. It was the first time I had ever seen Thurgood Marshall and I listened to him that morning as an advocate and I was highly impressed.

Since that time I have watched his career as a lawyer, as an advocate, and the chairman knows, as he is an old friend of mine, that I have served here also on subcommittees where we have had very controversial—I might say some controversy about of the men that have been nominated to the circuit court of appeals, and heretofore, I have, in a sense, been handed some of these "hot" cases. Some involve the district courts; removal from the district court to the circuit courts; some charges being made against them by members of the bar; and in some cases where men had been put into the circuit court of appeals, there have been some citizens appearing in opposition, and having some knowledge and experience of judges in this type of hearing and as I review the record of Thurgood Marshall in his long and distinguished career as a lawyer, I say he is far and above an outstanding man.

I know that this subcommittee has been giving this careful study and I want to say here for the record that there is not the slightest doubt in my mind that when this hearing is finished and is reported to the full committee, if given a chance to vote, this will be reported on the floor of the Senate.

There is not the slightest doubt in my mind that when this matter goes to the floor of the U.S. Senate, and if given a chance to vote, it will receive overwhelming approval.

Let me say I do not cast any reflections upon this committee for the delays, except I do want to say that Judge Marshall was nominated to the bench of the second circuit on September 23, 1961.

It is true that the Congress adjourned on the 27th without taking action on the nomination. But here we are: it is before us now. Many months have passed and here we have this highly competent man of great integrity, a man of great ability. His career is known and honored throughout the world and his name is indelibly imprinted upon the history of constitutional law.

This man's record, I hope will impress this subcommittee as I am sure it does everyone else, and I think that he will meet all of the high standards of the Federal bench.

I urge this committee to give some quick and prompt action. I think he has been examined, reexamined, and I hope that we can proceed to an early disposition of this matter before the Congress adjourns or before it gets caught in another filibuster.

I felt, Mr. Chairman, that I would come here and offer this.

I ask unanimous consent to put into the record the biography of Thurgood Marshall and a supplemental statement that I will file.

Senator JOHNSTON. The biography of Mr. Marshall and your statement may be placed in the record at this point.

(The biography of Thurgood Marshall and supplemental statement of Senator Carroll are as follows:)

BIOGRAPHY OF THURGOOD MARSHALL

Thurgood Marshall, lawyer.
Born Baltimore, Md., July 2, 1908, son of William and Norma A.
A.B., Lincoln University, 1930.
Doctorate Lincoln University, 1947.
LL.B., Howard University, 1933.
LL.D., Howard University, 1954.
LL.D., Virginia State College, 1948.
Morgan State College, 1952.
Grinnell College, 1954.
Syracuse University, 1956.
New York School of Social Research, 1956.
University of Liberia, 1960.
Married Vivian Burey, September 4, 1929. Died February 1955.
Married second time Cecelia Suwat, December 17, 1955.
Two children, Thurgood and John.
Admitted to Maryland bar, 1933.
Private practice, Baltimore, 1933–37.
Assistant special counsel of NAACP, 1936–38.
Special counsel, 1938 to present.
Director of Counsel Legal Defense and Educational Fund, 1940–present.
Civil rights cases argued include:
Texas primary case, 1944.
Restrictive covenant cases, 1948.
University of Texas and Oklahoma cases, 1950.
School segregation cases, 1952–53.
Visited Japan and Korea to make investigation of court-martial cases involving Negro soldiers, 1951.
Member of New York State Commission World's Fair.
Counsel, Consultation Conference on Kenya, London, 1960.
Representative of White House Conference on Youth and Children.
Member of the College Electors Hall of Fame, New York University.
Recipient of Spingarn Medal, 1946.
Living History Award, Research Institute.
Member, National Bar Association, New York City.
County Lawyers Association, Alpha Phi Alpha.
Religion: Episcopalian.
33d degree Mason.
Home address: 501 West 123d Street, New York City, N.Y.
Office address: 10 Columbus Circle, New York 19, N.Y.

STATEMENT OF SENATOR JOHN A. CARROLL

It is time the Senate confirmed the nomination of Thurgood Marshall to membership on the Circuit Court of the Second Circuit of New York.

This nomination has been before the Senate for almost a year and no action has yet been taken upon it. The subcommittee appointed to consider the nomination has not yet reported its findings. The full Senate Judiciary Committee of which I am a member has not yet considered the nomination. And thus the full Senate has been denied the opportunity to consider and confirm this nomination.

Delaying tactics have been used.

There can be no doubt that a majority of the Senate is willing and anxious to take up the business of this nomination. It is indeed regrettable that delays in the regular order should be thus used to thwart the wishes of the President and to embarass a distinguished jurist, Judge Marshall.

Judge Marshall was nominated to the bench of the Second Circuit on September 23, 1961. The Congress adjourned on the 27th of that month without taking action upon the nomination.

Thus, it was necessary for the President to give Judge Marshall a recess appointment, which he did on October 23. Judge Marshall's nomination was resubmitted to the Congress on January 15, 1962. Contrary to usual practice,

no hearing was held on this nomination until May 1. The subcommittee then recessed and did not reconvene until July 12. The subcommittee recessed again and only now is reconvening.

It is indeed deplorable that a man so respected and honored should receive such treatment from this body.

Thurgood Marshall's career is known and honored throughout the world. His name is indelibly imprinted upon the history of constitutional law. The movement to see that all American citizens, without regard to color, race, or creed, receive the full protection of the law and their full constitutional rights must indeed be grateful to Thurgood Marshall. Judge Marshall, as special counsel of the National Association for the Advancement of Colored People, participated in the historic court cases of the last two decades. He argued the *Texas Primary* case in 1944, the *Restrictive Covenant* cases of 1948, the *University of Texas* and *Oklahoma* cases of 1950 and, most especially, the school segregation cases of 1952 and 1953.

His professional ability is of the very highest order and I have no doubt that he will make an exceptionally able judge.

I urge an end to the delaying tactics which are unbecoming to such a body as the Senate.

I urge the speedy confirmation of Judge Thurgood Marshall.

Senator JOHNSTON. I want you to know that we on the subcommittee feel you are a member of the committee and want you to know you have a perfect right to come here and speak out.

Senator CARROLL. The chairman knows on many occasions the full committee does set up special committees to look into matters and the appointment of a Federal judge, as I have indicated, I have sat on many of those committees and Senator Keating has been with me on some of those committees and these are special. But this is the jurisdiction and the function of this committee which has jurisdiction in this case and I felt I ought to offer this word on behalf of a man who I think is not only a distinguished gentleman, but a great advocate of the principles of the bar.

Senator KEATING. Mr. Chairman, would you yield to me?

Senator JOHNSTON. Yes.

Senator KEATING. I will only take 1 minute of the very precious time here involved. But I do consider it my obligation to call attention to a marked contrast in the treatment of this case from other hearings on judgeship nominations.

The last nomination of Judge Marshall was submitted to the Senate on January 15, 1962, after his having served for an interim time and it seems to me there has been more than ample time for any inquiry which this subcommittee might have desired to make.

On January 23, 1962, 8 days after his nomination was sent here, the President submitted the nomination of Robert J. Elliott to be a U.S. district judge for the middle district of Georgia. Judge Elliott is now sitting on the cases which have arisen in Albany, Ga.

We were able at that time to complete action on this nomination within 2 weeks after its submission to the Senate.

William H. Cox of Mississippi was nominated on June 20, 1961, last year and was confirmed, having gone through the subcommittee, the full committee and presented to the Senate, being confirmed exactly 1 week later, that is on June 27, 1961.

In the case of Judge Elliott, this year Judge Marshall was nominated before Judge Elliott. Not a single adverse witness has appeared against him. He has been sitting under a recess appointment since last October.

The action on his nomination it seems to me has been delayed beyond any reasonable point. I have said before, Mr. Chairman, and I do it with the utmost respect as the Senator knows, but as a member of the full committee, it will be a step that I would take with great regret, but I am joined, I am happy to say, by other members of the full committee who are as disturbed as I am over the delay, that it will be necessary for us to initiate a move in the full committee to discharge this subcommittee from further consideration unless action can be completed on this nomination and a resolution reached one way or the other very promptly.

I am gratified that the distinguished chairman has indicated that after the hearing this morning, one more hearing, that is one morning session can complete this matter and that hearing can be held either Monday or Wednesday of next week.

In my judgment that would be satisfactory if it is possible for Judge Marshall to be here at that time.

I would withhold any action pending that disposition. However, in fairness to the distinguished chairman, I think I should make my position clear.

Senator JOHNSTON. I am glad to have these remarks from the Senator from New York.

I would also like to call attention to the fact that we have another New York judge who seems to be having some trouble also, Judge Cooper, and that is going to cause additional difficulty.

Senator KEATING. The distinction, Mr. Chairman, is that in Judge Cooper's case, there are a great many distinguished witnesses who have appeared against him.

There has not been a single witness who has indicated a desire to appear in opposition to Judge Marshall's nomination.

Senator JOHNSTON. That may be true.

Senator CARROLL. In view of the statement of Senator Keating, I have been gone for some period of time, and as I came back and have read the record in this case, and I cast no reflection upon this committee, but I want to say to Senator Keating I did not know about his statements but I am prepared myself, in the event this nomination does not move, I am prepared to make certain moves of my own.

I have discussed this with the Parliamentarian this morning and I hope this will come in its natural way and if it does not, there will be something done on our side of the aisle.

Senator KEATING. I realize that, and when I made my statement I intended it to be nonpartisan because Senator Dodd has also indicated his desire to join in my move.

Senator CARROLL. I want to say to the able Senator from New York, I did not know about this, but when I came in Monday, when I found about this, I thought that we should take appropriate steps.

On the other hand, I want to cast no reflection upon the chairman. He has a very difficult job and I am sure he will expedite this hearing.

Senator JOHNSTON. I do hope the two Senators that have spoken are not making that in the form of a threat to this subcommittee.

Senator CARROLL. That is the point I wanted to emphasize. This is not a threat at all. I think it will proceed in its proper way.

Senator JOHNSTON. We will now turn the matter over to counsel to continue with the questioning along the lines he was conducting when we had to adjourn the committee last.

Mr. LIPSCOMB. Mr. Chairman, at this point in the hearing I would like to introduce into the record as exhibit 7 to the nominee's testimony, three canons of professional ethics of the American Bar Association; canon 28, stirring up litigation directly or through agents, and I read, in part:

It is unprofessional for a lawyer to volunteer advice to bring a lawsuit except in rare cases where ties of blood, relationship, or trust make it his duty to do so.

Stirring up strife and litigation is not only unprofessional, but it is indictable in common law.

Canon 35, "Intermediaries," and I read, in part:

The professional services of a lawyer should not be controlled or exploited by any lay agency, personal accord which intervenes between client and lawyer. A lawyer's responsibility and qualifications are individual. He should avoid all relations which direct the performance of his duties by or in the interest of such intermediary.

A lawyer's relation to his client should be personal. The responsibility should be direct to the client.

Canon 47, "Aiding in the Unauthorized Practice of Law":

No lawyer shall admit his professional services or his name to be used in aid of or to make possible the unauthorized practice of law by any agency, person, or corporation.

Judge Marshall, is it not true that most, if not all, of the 50 States of the Union either by statute or through court control have substantially adopted the canons of ethics of the American Bar Association as the canons of ethics that govern the practice of law within the jurisdictions of the several States?

STATEMENT OF THURGOOD MARSHALL, NOMINEE TO BE U.S. CIRCUIT JUDGE FOR THE SECOND CIRCUIT

Mr. MARSHALL. I would assume that is correct.

Mr. LIPSCOMB. Plaintiff's exhibit 487 in the case of the State of Texas against the NAACP which was the subject of our discussion at the close of the hearings on July 12, the minutes of the executive committee——

Mr. MARSHALL. Pardon me, Mr. Lipscomb. What was that?

Mr. LIPSCOMB. I am going to tender this particular one to you in just one moment.

The minutes of the executive committee of the board of directors of the NAACP Legal Defense and Educational Fund, dated January 8, 1951, these minutes refer to the *University of Louisiana* case.

Is this the case of the *Board of Supervisors of Louisiana State University, Agricultural and Mechanical College et al.*, v. *Wilson* (340 U.S. 909) and did you appear as attorney of record in this matter?

Mr. MARSHALL. I appeared as attorney of record in the case of Wilson against LSU.

Mr. LIPSCOMB. These minutes read, in part:

University of Louisiana case: Mr. Marshall opened the meeting with a report on this case. He stated that the U.S. Supreme Court had affirmed the decision of the lower court. Certain information has come out pointing to the fact that

Roy Wilson, the plaintiff in this case, does not have the character background that would entitle him to continue on as a student at the University of Louisiana. Therefore, the State had ordered the taking of oral depositions to bring out these facts. Mr. Marshall reported that this was another case in which they had not checked the plaintiff.

It was agreed that we should take affirmative action in letting it be known to the university that we do not approve nor willingly sponsor the type of person such as facts have revealed Roy Wilson to be as plaintiffs in our cases. Mr. Marshall believes that we have to dismiss as to this plaintiff but attempt to get someone as an intervenor so we can hold it as a class action. It was unanimously agreed that Tureaud, local counsel, will be obligated to tell the court of the character background of Wilson.

Did you find another plaintiff to take the place of Roy Wilson?

Mr. MARSHALL. The record will show that an individual case was filed on behalf of Attorney Tureaud's son, A. Tureaud, Jr.

Mr. LIPSCOMB. The son of the counsel who was with you in that case?

Mr. MARSHALL. That is right.

Mr. LIPSCOMB. He was entered as the intervenor?

Mr. MARSHALL. I think his was an individual, separate case. I do not think he intervened in that one. I think he filed a separate case. That is my recollection.

Mr. LIPSCOMB. But you did think it was necessary for someone to take the place of your client who was Wilson.

Mr. MARSHALL. Did I think it was necessary to have somebody take his place?

Mr. LIPSCOMB. That is correct.

Mr. MARSHALL. Well, it was my idea of the law that in a class action, the named plaintiff had a right to get people to join him.

Mr. LIPSCOMB. Well, this was not a class action at the time, was it?

Mr. MARSHALL. I think it was.

Mr. LIPSCOMB. You think it was?

Mr. MARSHALL. The reason I think it was is because most of the cases, if not all of the cases that we have filed of this type have been class actions. That is the reason I say that.

Mr. LIPSCOMB. But it was you who said that you believe that you have to dismiss as to the plaintiff but attempt to get someone as an intervenor so you can hold it as a class action.

Mr. MARSHALL. We had several people who wanted to be intervenors. We had people including the son of the member of our board of directors.

Mr. LIPSCOMB. Well, did you not say that the son of the counsel who was with you in this case was the one who finally was substituted?

Mr. MARSHALL. That is as I understand. But as to Wilson, we could see no reason to consider continuing to help a man when his record appeared as it did.

Mr. LIPSCOMB. Well, you, as the attorney in this case, were representing Wilson, were you not?

Mr. MARSHALL. Yes; I was.

Mr. LIPSCOMB. And you can see no reason to help your own client?

Mr. MARSHALL. Not when I found out what he was charged with and obviously guilty of.

Mr. LIPSCOMB. You had no knowledge of his character or reputation when you undertook his defense?

Mr. MARSHALL. I had no record of what he had admitted subsequent to it and if the chairman is willing, I would be willing to state what the record is if there is a condition that it is not published because it is not matter of a court record.

Mr. LIPSCOMB. I am sure you would be glad to hear whatever he has to say, Mr. Chairman.

Senator JOHNSTON. I would be glad to.

Mr. MARSHALL. I was informed by the dean of the Law School of LSU, if I remember correctly, over the telephone, that once Wilson was admitted he applied for veterans assistance and when they checked, the usual check that is made, it was found he had a blue discharge. When they checked on that, they found the reason he was discharged from the Army was because he appeared to have three wives. The dean said that he took the position that a man of that type was not the type of person that could be trained to be a good lawyer and I agreed with the dean.

Senator JOHNSTON. Proceed.

Mr. LIPSCOMB. Plaintiff's exhibit 65 in the Texas cases is a letter from U. Simpson Tate to Dr. H. Boyd Hall, dated March 9, 1955. This letter states, in part:

> I should like, first, to join you in your advice to Mr. Young that the NAACP is not a fundraising agency to provide funds for the employment of private attorneys who are not associated with the NAACP to defend destitute persons who find themselves in the throes of the law.
>
> I notice by Mr. Young's letter to you, dated February 28, that the lawyers who are now defending Mr. Williams have indicated that they will not work with our NAACP lawyers. Under these circumstances, it will be utterly impossible for the NAACP to put a single dime into this case so long as those lawyers represent Mr. Williams, or so long as they maintain that attitude.
>
> As you know, it is a well-established policy of the Texas State Conference of Branches of NAACP that we will not finance any lawsuit over which we do not have complete control. This is true, not because we demand the right to run the show, but because we are more concerned with establishing correct and sound legal principles than we are with the defense of any single individual.

Does this correctly state the NAACP's attitude in regard to litigation in areas in which defendants have interest?

Mr. MARSHALL. I have no independent knowledge of the NAACP's policy at that time. I did not represent the NAACP. I represented the NAACP Legal Defense and Educational Fund, Inc.

Mr. LIPSCOMB. Do you see any substantial difference in the position taken in this statement and the position that you took in the *Wilson* case?

Mr. MARSHALL. Well, in the *Wilson* case I took no condition about I would not get into a case unless I controlled it.

Mr. LIPSCOMB. And vis-a-vis your relationship to the plaintiff or defendant in the case?

Mr. MARSHALL. I can say this, Mr. Lipscomb, in that case or any other case, the Legal Defense Fund of the NAACP has a steadfast rule which is, one, we only take cases that came to us from the lawyer or the party involved, and, two, once it was agreed to assist in the case, from that moment on the relationship between the client and the lawyer was governed solely by the Canons of the American Bar Association and that there was no variation to them.

That is the rule as long as I was with the NAACP Legal Defense Fund.

Mr. LIPSCOMB. And that rule also extended to the subordinate employees of the NAACP?

Mr. MARSHALL. In this case, absolutely. In this case, I point out Mr. Tate was not representing the NAACP Legal Defense Fund. He was representing the State Conferences of Branches of the NAACP. It is obvious to me from the record.

Mr. LIPSCOMB. Plaintiff's exhibit 457 in the Texas cases, is a copy of the letter from U. S. Tate to the Honorable H. M. Morgan, dated August 13, 1954, and the original photostat of the letter which is copied is attached to it as an exhibit and I ask you, Judge, to please refer to the photostat of this letter rather than the copy.

The communication is on the letterhead of the NAACP Legal Defense and Educational Fund, Inc. It contains a subtitle of, "Please direct reply to U. Simpson Tate, Southwest Regional Counsel, 1718 Jackson Street, Dallas, Tex.," and at the bottom is this line:

Contributions are deductible for U.S. income tax purposes.

The subject matter involved is the *Tyler Park* case in Texas.

Were you acquainted generally with this *Tyler Park* case in Texas?

Mr. MARSHALL. Very generally, but not specifically. I think I know about it.

Mr. LIPSCOMB. The letter states:

With reference to your letter of August 6, addressed to Mr. A. Maceo Smith concerning the *Tyler Park* case filed by Mr. Durham and me in 1950, I beg to say that your impression that the suit was thrown out of the Federal court because of some reason that could be better explained by Mr. Durham or Mr. Tate, is an erroneous one. The suit has not been thrown out of the Federal court for any reason.

I have explained this matter in your presence on several occasions. The most recent was at the meeting of the Texas Conference of Organizations held at Roseland Homes in February or March of this year.

The facts are that the Federal court held jurisdiction of the matter pending our bringing suit in the State court so that the State court could rule first on the validity of racial segregation in Texas parks, since the essence of the suit is in the interpretation of a Texas statute.

As I have said before, Mr. Durham and I were taken by surprise when the State came in prepared to prove that there had been no racial segregation in State parks, and ready to demand that we spell out separate and specific instances of racial segregation, where, when, why, by whom, against whom, for what facilities, in what park, etc.

We had expected that they would make a plea that they were segregating, but that they were compelled to do so by State law. Instead, they denied any type of segregation and put us to our specific proof. We then sent out several letters demanding that Negroes go into the parks and demand the use of various facilities such as swimming pools, restaurants, bathhouses, dancehalls and the like. I say to you, sir, that I personally have sent out several (more than five) such letters and until this day I have not received a single instance of such segregation.

Under the circumstances, I would be pleased to have you advise Mr. Durham and me on how we are to proceed. As I see it, we are in a poor position to bring the action in the State court since we do not have a single plaintiff—not one.

I hope that you will be able to respond to the letters that you have received.

Sincerely yours,

U. S. TATE.

Do you know, Judge, whether the lawyers in this case ever found any plaintiffs?

Mr. MARSHALL. I would say that, Mr. Lipscomb, so far as I know, the first I knew about this letter was at the Texas hearing in the *Tyler* case. That is the extent of my knowledge.

Mr. LIPSCOMB. Well, what did happen to this *Tyler Park* case?

Mr. MARSHALL. I do not know.

Mr. LIPSCOMB. But this letter was written on your letterhead by U. S. Tate.

Mr. MARSHALL. It was written on the letterhead printed and paid for by the NAACP Legal Defense Fund in bulk, and sent to Mr. Tate.

Mr. LIPSCOMB. And Mr. Tate himself was a paid employee of the fund?

Mr. MARSHALL. He was on a retainer. He was not a full-time employee, sir.

Mr. LIPSCOMB. Mr. Chairman, I ask that this document be made exhibit 10 to the testimony, and those immediately preceding be exhibits 7, 8, and 9.

Mr. JOHNSTON. They shall be made a part of the record.

(The documents referred to are as follows:)

EXHIBIT No. 7

CANONS OF PROFESSIONAL ETHICS

CANON 28. STIRRING UP LITIGATION, DIRECTLY OR THROUGH AGENTS.*

It is unprofessional for a lawyer to volunteer advice to bring a lawsuit, except in rare cases where ties of blood, relationship, or trust make it his duty to do so. Stirring up strife and litigation is not only unprofessional, but it is indictable at common law. It is disreputable to hunt up defects in titles or other causes of action and inform thereof in order to be employed to bring suit or collect judgment, or to breed litigation by seeking out those with claims for personal injuries or those having any other grounds of action in order to secure them as clients, or to employ agents or runners for like purposes, or to pay or reward, directly or indirectly, those who bring or influence the bringing of such cases to his office, or to remunerate policemen, court or prison officials, physicians, hospital *attachés* or others who may succeed, under the guise of giving disinterested friendly advice, in influencing the criminal, the sick and the injured, the ignorant or others, to seek his professional services. A duty to the public and to the profession devolves upon every member of the Bar having knowledge of such practices upon the part of any practitioner immediately to inform thereof, to the end that the offender may be disbarred.

CANON 35. INTERMEDIARIES.*

The professional services of a lawyer should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between client and lawyer. A lawyer's responsibilities and qualifications are individual. He should avoid all relations which direct the performance of his duties by or in the interest of such intermediary. A lawyer's relation to his client should be personal, and the responsibility should be direct to the client. Charitable societies rendering aid to the indigent are not deemed such intermediaries.

A lawyer may accept employment from any organization, such as an association, club, or trade organization, to render legal services in any matter in which the organization, as an entity, is interested, but this employment should not include the rending of legal services to the members of such an organization in respect to their individual affairs.

Canon 28 was amended to its present form at this annual meeting on July 26, 1928, by inserting the words "or collect judgment" in the 6th line as printed above.

Canon 35 was amended August 31, 1933, by inserting the words "by or" between the words "duties" and "in" on line 5 and by striking out the following concluding paragraph:

"The established custom of receiving commercial collections through a lay agency is not condemned hereby."

CANON 47. AIDING THE UNAUTHORIZED PRACTICE OF LAW.*

No lawyer shall permit his professional services, or his name, to be used in aid of, or to make possible, the unauthorized practice of law by any lay agency, personal or corporate.

EXHIBIT No. 8

(PLAINTIFF'S EXHIBIT No. 487)

N.A.A.C.P. LEGAL DEFENSE AND EDUCATIONAL FUND, INC.

MEETING OF THE EXECUTIVE COMMITTEE OF THE BOARD OF DIRECTORS, MONDAY, JANUARY 8, 1951

The regular meeting of the Executive Committee of the Board of Directors was held at its offices, 20 West 40th Street, New York City, at 1:00 P.M. on January 8, 1951, pursuant to notice.

Present Messrs. Carter, Delany, Hammond, Marshall, Spingarn, Toney, Weinberger, White.

Regrets: Dr. Tobias.

University of Louisiana Case: Mr. Marshall opened the meeting with a report on this case. He stated that the United States Supreme Court had affirmed the decision of the lawyer court. Certain information has come out pointing to the fact that Roy Wilson, the plaintiff in this case, does not have the character background that would entitle him to continue on as a student at the University of Louisiana. Therefore, the State had ordered the taking of oral depositions to bring out these facts. Mr. Marshall reported that this was another case in which they had not checked the plaintiff.

It was agreed that we should take affirmative action in letting it be known to the University that we do not approve nor willingly sponsor the type of person such as facts have revealed Roy Wilson to be as plaintiffs in our cases. Mr. Marshall believes that we have to dismiss as to this plaintiff but attempt to get someone as an intervenor so we can hold it as a class action. It was unanimously agreed that Tureaud, local counsel, will be obliged to tell the court of the character background of Wilson.

Martinsville Seven: The Supreme Court of the United States has refused certiorari. Lawyers in Virginia are going to apply to federal court for habeas corpus. The only other redress will be clemency.

Trenton Six: The Association is representing two of the men who requested our aid. The Judge has agreed to this. A committee of white citizens decided to hire Arthur Garfield Hays after O. John Rogge, Solomon Bloch and William Patterson withdrew from the case. Mr. Marshall reported that negotiations are underway to have Raymond Pace Alexander of Philadelphia, Pa. serve as counsel for the two men we represent. Mr. Marshall reported that Charles Howard appeared along with Arthur Garfield Hays in court on Friday to request the right to represent the other three men. Mr. Hays was admitted but the judge did not act upon Mr. Howard. He said that Mrs. Hays wants to raise money (Tax exempt) and have it come to the Inc. Fund and we could give it to their committee for expenses, etc. Mr. Marshall stated that he would strongly recommend that we not use the Inc. Fund as a funnel for funds for some other group or organization.

Judge Delany made the following motion which was seconded and passed:

"We refuse to accede to the request that funds be collected and funneled through the Inc. Fund because we do not think that it is ethically correct to do so and furthermore we consider that it might affect our tax exemption status."

Mr. Marshall then reported that a meeting with the state conference executive committee that they have two lawyers which they have to keep in the case: Clifford Moore, of Trenton, New Jersey, and Mercer Burrell, of Newark, New Jersey.

Regarding payment for these attorneys, Judge Delany made the following motion, which was seconded, and passed:

"Lawyers in the Trenton Six case are to be paid a total of $8,000.00—$5,000.00 maximum for Raymond Pace Alexander and $3,000.00 maximum for the other

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*Adopted September 30, 1937.

two lawyers plus $1,000.00 for incidental expenses. The $5,000.00 fee for Mr. Alexander is to include all expenses. Mr. Alexander is to be paid at the rate of $1,000.00 per week up to $5,000.00 and the other two lawyers are to be paid a total of $500.00 per week to be divided between them up to $3,000.00."

It is understood that the State Conference will be able to raise one-half of the $10,000.00 amount set as the cost for the defense of these two men. The money collected is to be turned over to the State Conference Treasurer, who will be bonded.

Derrick Case, New York: The New York Branch had requested a loan to help them prosecute this case whereby a young Negro veteran had been shot and killed by a patrolman on the day of his release from the armed forces. The amount of the loan asked was for $2,000.00. After much discussion it was unanimously agreed that a gift of $1,000.00 be made to the New York Branch to enable them to fight this case. It was pointed out that the National Office should publicize this gift which should help to win support and friends in the New York Branch.

Mr. Spingarn wanted to know how far the branch group handling the Derrick case was going to work with this office. Mr. Marshall stated that they had consulted him before making any decisions or taking any action in this case. Mr. White then read a telegram sent to Mayor Impellitteri concerning this case which was signed by elected officials of Harlem and Washington Heights. Since this telegram was considered highly inflammatory and irresponsible, another wire signed by James Robinson, who is chairman of the NAACP John Derrick Citizens Committee, had been sent to the Mayor.

Levittown Case: Novick and Ross—Mr. Weinberger made a report on this case, which is a suit which the NAACP has brought against Levitt, the builder of Levittown for starting eviction proceedings against two tenants Novick and Ross who are being evicted apparently because they entertained colored children in their homes. Of course, no reason is given for eviction notices. We have a temporary stay in the appellate division pending the hearing on our appeal, and we are now preparing papers for stay to be filed with Court of Appeals.

Athens Ga. School Case: Mr. Marshall reported that he had received a request from the Athens, Ga., school case committee asking permission in this one case to try the case on the separate but equal theory rather than on the constitutionality of segregation. The reason for the request was stated as being that the Athens Branch has collected money to fight an equalization suit, and it would be necessary to return the contributions if they had to institute a suit attacking segregation. It was unanimously decided that the branch and Mr. Walden be advised that we exceedingly regret that we cannot waive our rule in this case. However, it was thought wise to have a national officer arrange to meet with the branch people and convince them of the desirability and necessity of filing an antisegregation suit. Inasmuch as Mr. White will be in Atlanta next week, it was suggested that Mr. Marshall write to the people in the Athens branch and suggest that since Mr. White's schedule would not permit him to visit Athens, that a committee from Athens meet with Mr. White in Atlanta on the morning of the 20th to discuss this case.

Salary Increase, Mrs. Waring, Chief Bookkeeper.—Mr. White then read a memorandum received from Mrs. Waring asking for a salary adjustment of $500.00 which request had been made in September 1949. It was decided to table this request to be reconsidered at the March meeting.

Financial Report: Mr. Marshall reported that the total receipts in the Inc. Fund for 1950 was $144,759.09, total expenses $149,592.61, and that we ended up the year with a net loss of $4,833.52. He reported that at the present time we had a cash balance of $28,028.97.

Mr. White reported that the response to the Dr. Bunche dinner was tremendous.

There being no further business, the meeting was adjourned.

s/d WALTER WHITE, *Secretary.*

(PLAINTIFF'S EXHIBIT No. 488)

N.A.A.C.P. LEGAL DEFENSE AND EDUCATIONAL FUND, INC.

107 West 43rd Street, New York 36, N.Y.

U. Simpson Tate, Southwest Regional Counsel, Dallas, Texas.

EXHIBIT No. 9

(PLAINTIFF'S EXHIBIT No. 65)

MARCH 9, 1955.

Dr. H. BOYD HALL,
722 Artesian Street,
Corpus Christi, Texas.

DEAR MR. HALL: Your letter of March 1st, addressed to Mr. A. Maceo Smith, Executive Secretary, Texas State Conference of Branches of NAACP, has come to me for reply.

I should like, first, to join you in your advise to Mr. Young that the NAACP is not a fund raising agency to provide funds for the employment of private attorneys who are not associated with the NAACP to defend destitute persons who find themselves in the throes of the law.

I notice by Mr. Young's letter to you, dated February 28, that the lawyers who are now defending Mr. Williams have indicated that they will not work with our NAACP lawyers. Under these circumstances, it will be utterly impossible for the NAACP to put a single dime into this case so long as those lawyers represent Mr. Williams, or so long as they maintain that attitude.

As you know, it is a well established policy of the Texas State Conference of Branches of NAACP that we will not finance any lawsuit over which we do not have complete control. This is true, not because we demand the right to run the show, but because we are more concerned with establishing correct and sound legal principles than we are with the defense of any single individual.

Finally, I think that it is unfortunate that this matter has been allowed to progress to the point of a conviction before we were invited to come into it. This is true because there are certain rights of the accused which must be asserted at the threshold of the defense to establish a predicate for reversal if a conviction is had. While I have not had the privilege of reading the record in this case, I seriously doubt that these rights have been preserved.

I hope that this adequately conveys the NAACP's position in this matter. If there remains any detail in your mind that you feel deserves further attention, we will be very happy to consider it.

Sincerely yours,

U. SIMPSON TATE.

UST: glw.
cc: Mr. Oscar Young, 2608 Avenue B, Bay City, Texas.

EXHIBIT No. 10

(PLAINTIFF'S EXHIBIT No. 457)

N.A.A.C.P. LEGAL DEFENSE AND EDUCATIONAL FUND, INC.,
107 West 43rd Street, New York 18, N.Y., August 13, 1954.

Please direct reply to: U. Simpson Tate, Southwest Regional Counsel, 1718 Jackson Street, Dallas, Texas.

Honorable H. M. MORGAN, *President,*
Democratic Progressive Voters League of Texas,
212 East Erwin Street,
Tyler, Texas

DEAR MR. MORGAN: With reference to your letter of August 6th, addressed to Mr. A. Maceo Smith, concerning the Tyler Park case filed by Mr. Durham and me in 1950, I beg to say that your impression that the suit,"* * * was thrown out of the Federal Court because of some reason that could be better explained by Mr. Durham or Mr. Tate." is an erronous one. The suit has not been thrown out of the Federal Court for any reason.

I have explained this matter in your presence on several occasions. The most recent was at the meeting of the Texas Conference of Organizations held at Roseland Homes in February or March of this year.

The facts are that the Federal Court held jurisdiction of the matter pending our bringing suit in the State Court so that the State Court could rule first on the validity of racial segregation in Texas parks, since the essence of the suit is the interpretation of a Texas Statute.

As I have said before, Mr. Durham and I were taken by surprise when the State came in prepared to prove that there had been no racial segregation in State Parks, and ready to demand that we spell out separate and specific instances of racial segregation, where, when, why, by whom, against whom, for what facilities, in what park, etc.

We had expected that they would make a plea that they were segregating, but that they were compelled to do so by State law. Instead they denied any type of segregation and put us to our specific proof. We then sent out several letters demanding that Negroes go into the parks and demand the use of various facilities such as swimming pools, restaurants, bath houses, dance halls and the like. I say to you sir, that I personally have sent out several (more than five) such letters and until this day I have not received a single instance of such segregation.

Under the circumstances, I would be pleased to have you advise Mr. Durham and Me on how we are to proceed. As I see it we are in a poor position to bring the action in the State Court since we do not have a single plaintiff—not one.

I hope that you will be able to respond to the letters that you have received.

Sincerely yours,

s/d U. S. TATE.

Contributions are deductible for U.S. Income Tax Purposes.

Mr. LIPSCOMB. Plaintiff's exhibit 61 in the Texas case contains an earlier reference to the Tyler State Park. This letter is dated August 15, 1951. It is addressed to Mr. T. R. Register and signed by U. Simpson Tate, regional counsel. It reads:

The list of facilities at the Tyler State Park show that they have fishing, boating, swimming, a bathhouse, a picnic area, camping and playgrounds.

Mr. Durham and I have discussed the matter, and it is our opinion that a request should be made for the use of each of these.

We are asking that you form a committee to make the necessary requests, do so at your earliest convenience, and let us know the results. In each of these instances, at least one person must be prepared to come to court and testify.

Sincerely yours,

U. SIMPSON TATE.

This letter and the one previously discussed, represents a spread of 3 years.

Again, your regional and special counsel, Mr. Durham were having great difficulty in supplying plaintiffs for the Tyler Park situation, were they not?

Mr. MARSHALL. I cannot answer the question as to whether or not Mr. Tate and Mr. Durham were soliciting plaintiffs. All I know is what is in these two letters.

Mr. LIPSCOMB. Did not Mr. Tate make regular reports to you in regards to all of his activities?

Mr. MARSHALL. Rather regularly, usually about once a month.

Mr. LIPSCOMB. Was a lawsuit ever filed to your knowledge involving Lake Corpus Christi Park in Texas?

Mr. MARSHALL. I do not know. I cannot recall offhand.

Mr. LIPSCOMB. In regard to this park, the same exhibit contains a letter dated August 15, 1951, from U. Simpson Tate, regional special

counsel, to Mr. G. A. Carroll, in which he says:

We have decided to make another attack on the parks in Texas. Last year, one of the churches in Corpus Christi made application to use the camping area at the Lake Corpus Christi Park and was refused.

The facilities listed at the Lake Corpus Christi Park are a dance terrace, swimming in the lake, and camping.

Mr. Durham and I have discussed the matter and we are of the opinion that a demand should be made for the use of each of these facilities. We are, therefore, asking that you, in cooperation with church groups or other groups of persons, of your own choice, form the necessary committees to go out and make application for the use of each of these facilities and let us know the outcome, immediately.

In each of these instances, at least one person must be prepared to come to court and testify. May we hear from you at your earliest convenience.

Sincerely yours,

U. SIMPSON TATE.

Do you know whether your regional special counsel was successful in supplying plaintiffs to institute such a law suit?

Mr. MARSHALL. In the first place, Mr. Tate was never our regional special counsel. He was regional special counsel for the NAACP. He was southwest regional counsel for the NAACP Legal Defense Fund and Educational Fund.

I repeat, I knew nothing about these two letters prior to the Tyler Park hearing as far as I know. I do not question at sometime Mr. Tate might have included it in one of his reports, but if so, that I would imagine would be the most I would know about it.

Mr. LIPSCOMB. Mr. Chairman, I ask that these documents be made a part of the record as exhibit 11.

Mr. JOHNSTON. They shall be made a part of the record as exhibt 11.

(The documents referred to are as follows:)

EXHIBIT NO. 11

(PLAINTIFF'S EXHIBIT NO. 61)

AUGUST 15, 1951.

MR. G. A. CARROLL,
1027 Sam Rankin,
Corpus Christi, Texas.

DEAR MR. CARROLL: We have decided to make another attack on the parks in Texas. Last year one of the churches in Corpus Christi made application to use the camping area at the Lake Corpus Christi Park and was refused.

The facilities listed at the Lake Corpus Christi Park are dance terrace, swimming in the lake, and camping.

Mr. Durham and I have discussed the matter and we are of the opinion that a demand should be made for the use of each of these facilities. We are, therefore, asking that you, in cooperation with church groups or other groups of persons, of your own choice, form the necessary committees to go out and make application for the use of each of these facilities and let us know the outcome, immediately.

In each of these instances at least one person must be prepared to come to court and testify. May we hear from you at your earliest convenience.

Sincerely yours,

U. SIMPSON TATE,
Regional Special Counsel.

UST:bg.
cc: Attorney W. J. Durham, Dr. H. Boyd Hall.

AUGUST 15, 1951.

Mr. T. R. REGISTER,
P.O. Box 149,
Tyler, Texas

DEAR MR. REGISTER: The list of facilities at the Tyler State Park show that they have fishing, boating, swimming, a bathhouse, a picnic area, camping and playgrounds.

Mr. Durham and I have discussed the matter, and it is our opinion that a request should be made for the use of each of these.

We are asking that you form a committee to make the necessary requests, do so at your earliest convenience, and let us know the results. In each of these instances at least one person must be prepared to come to court and testify.

Sincerely yours,

U. SIMPSON TATE,
Regional Special Counsel.

UST: bg.
cc: Attorney W. J. Durham.

Mr. LIPSCOMB. In the interest of time and in deference to your request, Senator Keating, I would like to offer for the record, en bloc, numerous other exhibits taken from the record of the *Texas* case involving the activities of U. S. Tate, special counsel of the NAACP Legal Defense and Educational Fund and others that were pertinent to the complaint and findings in the Texas court.

I give here a brief description of each.

U. S. Tate was one of the attorneys of record in the case of *Norma Joyce Allen* v. *B. E. Masters and others*, U.S. District Court for the Eastern District of Texas, Tyler Division.

On December 8, 1954, he addressed a letter to 19 named addressees wherein he urged that all parties see to it that the 11 named plaintiffs in the case be present in the courthouse in Tyler not later than 9 o'clock Monday, January 17, 1955 for trial. He added:

You know, this matter was set for trial on the 11th of October 1953 and we were unable to go to trial because none of the witnesses appeared. If this happens again, we will have no other choice but to dismiss the suit.

If any of the plaintiffs are available, the attorneys would like to have the opportunity to talk to them on Friday, January 14, 1955, at the Community Center in Longview.

Please advise us if it can be arranged. If not, he should have them in court at 9 o'clock, January 17, 1955.

This would be plaintiff's exhibit No. 40; exhibit 12.

In a memorandum dated May 26, 1954 addressed to all branch offices of the NAACP in Texas from U. Simpson Tate, regional counsel, he states, in part:

This is to urge all of our branches, especially those in Paris, Tyler, Kilgore, Texarkana, San Antonio, San Angelo, Amarillo, Corpus Christi, and in every other community where there is a publicly supported junior college, to exert a strong effort to get qualified high school graduates to make application and attend these fine institutions.

Negro youth have been attending the Amarillo Junior College since 1951, the Howard County Junior College at Big Spring and the Del Mar Junior College at Corpus Christi since 1952 and the San Angelo Junior College since September 1953. So, we have both the law and local practice in our favor. By all means get qualified students to make application to junior colleges in your community.

If they are denied admission, inform this office at once (Exhibit No. 13).

On June 8, 1950, U. S. Tate wrote one M. C. Jamison, Jr., and set out the procedures for developing and filing a suit to the regional office. He pointed out the theory of the suit must be approved by the

local branch, that the branch then calls upon the State office and certain procedures are followed.

After this has been done, the State conference would approve or reject the suit.

He adds, in the fourth step:

The branch will then use form III to secure plaintiffs for the law suit. As to plaintiffs, we usually prefer at least 10. Each one will fill out one of the forms, No. III, inclosed herein. The space in line 1 should give the authority to Attorney C. B. Bunkley, Jr., of Dallas, Tex.

The first thing to be done is for the branch to work out means for raising the amount of money necessary to support the suit together with expenses for attorneys as occasion demands for coming into the community. To carry a case through the trial court it will be necessary, in my opinion, to raise approximately $600.

That is plaintiff's exhibit 51, our exhibit 14.

One of the attachments to plaintiff's exhibit 53, exhibit 15 is a letter from U. S. Tate, regional special counsel, dated August 6, 1951, to the Reverend R. H. Hines, Amarillo, Tex.

Tate relates that meetings were held by some of the State officers of the NAACP on Saturday, August 4, 1951, at Lake Texoma with a group of citizens from Wichita Falls who indicated that the Wichita Falls Branch wished to commence suit against the Wichita Falls Junior College to gain admission of Negroes thereto.

He adds:

Thurgood Marshall was present, and after prolonged discussion, it was agreed that where an individual branch feels that it wants to commence such a suit, notwithstanding the pendency of the *Texarkana* case, and the branch concerned is willing to assume the financial responsibility of the suit, as the Wichita Falls Branch has done, it was agreed that such a suit would be filed.

Due to the heavy expense of the *Sweatt* case, which cost approximately $22,000 to try, with an additional $11,000 to finance his education, it has become necessary for local branches to bear a larger share of the cost of future suits.

I hope this makes the position of the State organization clear on this question. If there are other questions which present themselves to you, let us hear from you.

Sincerely yours,

U. SIMPSON TATE,
Regional Special Counsel.

Tate's reply to Mr. Thurgood Marshall, director and counsel, NAACP Legal Defense and Educational Fund, Inc., dated December 6, 1955, is:

In compliance with your request, I hereby submit a program of proposed legal action during the coming year in the five States that comprise the southwest region—Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.

In one portion of this report, he states:

In the past we have found it extremely difficult to get persons to undertake to use the sensitive facilities such as restaurants, swimming pools, dance facilities, and the like.

We shall continue to press the issue.

That is plaintiff's exhibit 54, exhibit 16.

Plaintiff's exhibit 56, exhibit 17 hereto is a letter from Tate in regard to R. E. Garrett, Tyler, Tex., dated October 3, 1950, in regard to the representation of one Nathaniel Hancock in a proposed legal action.

Tate says, in part:

The offer which was made to you above to represent Mr. Hancock without fee carries with it the condition that the Tyler Branch must bring itself into active standing with the State conference and meet its financial obligation thereto in order to entitle it to any services from the regional office.

On June 3, 1953, Mr. Tate addressed a letter to Mr. Arthur DeWitty, Austin, Tex.

Mr. DeWitty was representing the NAACP on legislative matters in Texas at that time was he not, Mr. Marshall, if you recall?

Mr. MARSHALL. I recall that at one time Mr. DeWitty did represent the State Conference of the NAACP on legislative matters in Austin. I am not responsible for that at all.

Mr. LIPSCOMB. I understand. I am trying to identify Mr. Dewitty.

Mr. MARSHALL. I think it is correct.

Mr. LIPSCOMB. In which he says, in part:

There is one thing on which we can agree. I am thoroughly convinced that we should get rid of Shivers. I feel this quite strongly even though we might not profit very much by the exchange.

In the matter of determining who shall be the standard bearer, I would tend to follow the advice of those of you who have lived in Texas longer than I.

I suggest that you write Attorney W. J. Durham, 2600 Flora Street, Dallas, to secure his thinking on the matter.

Here in Dallas I have tended to follow Durham's leadership in such matters because of his experience in Texas which far exceeds mine.

That is plaintiff's exhibit 60, exhibit 18.

The letter which is part of plaintiff's exhibit 64, exhibit 19 here from U. Simpson Tate to John J. Jones, dated July 19, 1956, involves the use of recreational facilities in Texarkana, Tex., and reads, in part:

In order that we may be quite sure of ourselves, I think it is going to be necessary to make a tender. The simplest gesture will be enough. We will have to do this in order to establish that some citizen of the community has been injured by the ruling. There is a rule of law that no one can complain about a statute, ordinance, or administrative ruling who has not been injured by it. So if you can get a few Negro children and/or adults to simply go to the swimming pool or any other activity in the park and offer to use it and be rejected, we are in business.

If you want me to come to Texarkana and advise with you further on this matter, please let me know and I will gladly do so.

A letter included in plaintiff's exhibit 87, exhibit 20 hereto was written by U. S. Tate to the officials of the Dallas Branch of the NAACP, dated March 20, 1949.

This letter deals with the showing of the "Birth of the Nation" at a theater in Dallas beginning Friday, March 25, 1949.

Tate says:

It appears to me that this is something against which the Dallas Branch should throw all of its strength.

You certainly know that the picture is historically inaccurate; it is inflammatory and harmful to racial relations; it has been barred in more than 110 major cities throughout the United States for these and other reasons.

When it was offered to the public in Washington about 1938 we were able to get it banned there by first appealing to the City Commissioners and the Major of Police; we had a preview showing of the play before some 100 leading citizens representing organizations of all descriptions and by a vote of that group our position was sustained; that did not convince the Commissioners and the Cor-

poration Counsel and we informed them that if it went on we would throw a picket line around the theater; this did not convince them and we did picket the theater, but by that time, the public had been so well informed that the picket line was entirely effective and the play ran 1 night only and has never returned to the District of Columbia.

It appears to me that this is a nice, clean project which the NAACP can take on and gain, I believe a large body of public support if the true story of the picture is told.

I regret that I shall not be here to help you make this fight, but I think it is one that you can win and thereby render a service to the community.

Plaintiff's exhibit 98, exhibit 21 hereto, is a form of authorization executed to authorize U. S. Tate to act for and on behalf of the undersigned parents to secure for them educational facilities and opportunities that they may be entitled to under the Constitution and laws of the United States, and to represent them in all suits of whatever kind and character pertaining thereto.

Exhibit 22 is a communication from U. S. Tate to the branch officers of the NAACP, dated August 1, 1952.

This letter states, in part:

If there is a junior college near you, encourage young people to apply for admission. If it is not the Howard County Junior College or the Amarillo Junior College, or the Corpus Christi Junior College which are already accepting Negroes, discuss your plans with this office before you move into a fight. We have the know-how to help you. Do not go off before you are ready. But do not stand still. We can help you to get ready.

If you live near Amarillo, Corpus Christi, or Big Spring, by all means try to get children to go to those junior colleges. Let's use our privileges.

If you live near Wichita Falls, Texarkana, or Kilgore, get children ready to apply. Write this office and let us know and we will help you to do the job right.

Plaintiff's exhibit 224, exhibit 23 to the record is an unsigned letter to Tate which states:

I am sorry but I have exhausted every effort I know to find a plaintiff for the case which you talked to me about. I have contacted all the persons whom I know could assist us but they either were not interested in the project or they too were unable to make the required contacts; anyway, they claimed to have tried.

It seems that most students are already enrolled and adults are not interested in trying it.

I hate to fail you, but I did do my best.

Plaintiff's exhibit 484, excerpts from which are attached hereto as exhibit 24, is a transcript of proceedings in the District Court of the United States for the Eastern District of Texas, Texarkana Division.

It is the case of *Wilma Dean Whitmore, a minor, by her sister and next friend, Katy Colter, et al.*, plaintiffs, v. *H. W. Stilwell as president of Texarkana Junior College, et al.*, defendants, civil action 366.

U. Simpson Tate appeared for the plaintiffs.

The matter before the court was a motion filed on behalf of the two minors, Jessalyn and Steve Poston seeking leave of the court to intervene as party plaintiffs.

Counsel representing the defendants asked the testimony on the question of whether or not the intervening petitioners were members of the same class as on the original petitioner and the question of fact as to whether or not these petitioners desired to file this suit.

U. S. Tate took the stand as a witness and testified, in part:

Question. Did you, Counsel, ever see Jessalyn Gray or Steve Poston or Steve Poster as he is named in this petition?
Answer. No, sir, I never had.
Question. Until they walked in the courtroom just now?
Answer. I never had.
Question. Do you know Jessalyn Gray's father, Barrett Gray?
Answer. I don't know.
Question. Or Steve Poston's grandfather, James Poston?
Answer. I don't.
Question. Who contacted you in regard to this suit?
Answer. Mr. John J. Jones of Texarkana.
Question. Did he state to you that Jones had been asked by these plantiffs or by their guardians or by their grandfather or by any of them to contact you in their behalf?
Answer. He stated to me that they had asked him as a representative of the National Association for the Advancement of Colored People to assist them in preserving and procuring their civil rights to attend Texarkana Junior College and he, in turn, asked me to represent them.

Tate then addressed the court, and said:

May it please the court, I would like to move the court to dismiss this suit with respect to this petitioner and ask that they both be dismissed without prejudice so if they want to hire another lawyer, they may.
The COURT. You mean you are disqualifying yourself?
Mr. TATE. Yes, sir.
The COURT. Your motion will be granted. All right, that puts an end to this matter.
Now, just a minute; there has been some testimony here that this court cannot overlook. And in making this statement that I am going to make, I want to say that as far as this court is concerned, this type of lawsuit stands on the same basis as any other lawsuit filed in this court and there are certain rules and demeanor that the attorneys of this bar must follow.
I would suggest to you, Mr. Tate, that in the future if you expect to appear in this court in connection with any of these cases or any lawsuit, regardless of what it is, that you be sure that you are properly employed in the case by the party whom you purport to represent and not by some third party intervening and coming in there.
Mr. TATE. I want the court to know I appreciate very much the situation.

Judge Marshall, you were interested in this *Texarkana* case throughout its long course.

Mr. MARSHALL. The first I knew of that proceeding was in the *Tyler* case. The first I knew of that transcript or that hearing was in the *Tyler* case.

I knew of the *Texarkana Recreation* case or whatever it was from his report, but as to the details, I know I did not know of that until I got to Texas.

Mr. LIPSCOMB. Well, Tate was giving you a report every month as to what he was doing out there, was he not?

Mr. MARSHALL. I guarantee you, sir, that Tate never gave me a report that he went into court with clients that he did not represent.

Mr. LIPSCOMB. When did Tate transfer from Texas insofar as his relationship with the Legal Defense and Educational Fund of the NAACP was concerned?

Mr. MARSHALL. His relationship with the legal defense fund was terminated about a year after the *Tyler* case, if I remember correctly while he was still in Texas and he is now practicing in Oklahoma.

In order to practice in Oklahoma, he must have gotten a good bill of health from the bar of Texas.

Mr. LIPSCOMB. When representatives from the State of Texas went to New York to interview you in your capacity as director and counsel of the NAACP Legal Defense and Educational Fund, you supplied them certain information and documents from the files of the corporation, did you not?

Mr. MARSHALL. I did.

Mr. LIPSCOMB. Whatever names appear in the correspondence, the original copies of which you gave to them, you deleted by cutting with scissors, cutting out such names.

Mr. MARSHALL. I deleted them by cutting them with a sharp knife. The reason I did that was because it was obvious that the attorney general of the State of Texas was interested in getting the names of the members or contributors to the legal defense fund.

We denied them the list of our contributors. We denied them the names of people associated with us and our right to deny that has been subsequently upheld by the U.S. Supreme Court in the *Alabama* case.

Mr. LIPSCOMB. I hand you herewith a document styled "Plaintiff's Exhibit 398," our exhibit No. 25, in the *Texas* case and ask you if this is not a sample of the correspondence from which you deleted the names.

Mr. MARSHALL. I do not see the deletions. I see—yes—I see them.

Mr. LIPSCOMB. This particular series of corerspondence involves the *Texarkana* case which I last referred to in connection with U. S. Tate's activities.

The first letter in this series is dated August 20, 1954, and appeals to you to lend whatever assistance is necessary to bring this case to trial.

It reads, in part:

Attached herewith copies of my letters to Mr. U.S. Tate and Mr. W. J. Durham, attorneys representing a *Texarkana College* case which was to have been tried in the Federal District Court of East Texas, Texarkana, Tex., August 17, 1954. These letters are self-explanatory, hence, as chief counsel of the NAACP we are appealing to you to lend whatever assistance is necessary to bring this case to trial.

That is the same *Texarkana College* case from which we just read the transcript of the court record?

Mr. MARSHALL. I am confused, Mr. Lipscomb, as to whether there were two *Texarkana* cases that you have discussed.

Now one was the recreation case and the other was the Texarkana College.

I am just saying that I am the one that is confused, sir.

Mr. LIPSCOMB. The recreation case did not involve the Texarkana Junior College.

Mr. MARSHALL. No; they were two separate cases.

Mr. LIPSCOMB. That is correct. But the case from which U. S. Tate withdrew from was the *Texarkana College* case.

Mr. MARSHALL. I think so.

Mr. LIPSCOMB. The fourth page of this exhibit is a letter you wrote to both Durham and Tate under date of August 27, 1954, which says—first, there is the deletion to whoever that was addressed to, but it says:

* * * of the Texarkana Branch sent me copies of his correspondence with you of August 20 concerning the Texarkana Junior College matter.

I would appreciate it very much if you would let me know just how this case stands and what possibilities there are to protect the rights involved so that we will not have another monument set up to Jim Crow education.

I, of course, do not know the circumstances of the proposed hearing of August 17 and I assume that there was something involved which forced the postponement. At any rate, I would appreciate a report on the matter.

Now, the case that you are referring to there is the *Texarkana Junior College* case?

Mr. MARSHALL. Right.

Mr. LIPSCOMB. To which Tate later withdrew.

Mr. MARSHALL. I assume that is correct.

Mr. LIPSCOMB. Well, did Tate give you a report as to why there was a postponement of the proposed hearing?

Mr. MARSHALL. I don't think so. But I do make this clear; that he at no time reported to me that he was representing people that he was not authorized to represent.

Mr. LIPSCOMB. Mr. Chairman, I would like to have this document entered into the record as exhibit 25.

Mr. JOHNSTON. The documents presented, beginning with exhibits Nos. 12 through 25 will be inserted in the proceedings of the hearing at this time.

(The document referred to is as follows:)

EXHIBIT No. 12

(PLAINTIFF'S EXHIBIT No. 40)

N.A.A.C.P. LEGAL DEFENSE AND EDUCATIONAL FUND, INC.,
107 West 43rd Street, New York 18, N.Y., December 8, 1954.

Please direct reply to: U. Simpson Tate, Southwest Regional Counsel, 1718 Jackson Street, Dallas, Texas.

Mr. Ike White, Box 1532, Longview, Texas
Mr. T. L. Lockhart, Route 1, Box 124, Kilgore, Texas
Mr. H. M. Morgan, 212 E. Erwin Street, Tyler, Texas
Mrs. C. M. Scott, President, Kilgore Branch, NAACP, and Mr. J. S. Liscomb, Secretary, Kilgore Branch, NAACP, 513 West South Street, Kilgore, Texas
Mr. M. E. Erwin, President, Tyler Branch, NAACP, Route 6, Box 148–A, Tyler, Texas
Miss Johnnis C. Fuller, Secretary, Tyler Branch, NAACP, 826 West Franklin Street, Tyler, Texas
Mr. John J. Jones, P.O. Box 801, Texarkana, Texas
Dr. H. Boyd Hall, 722 Artesian Street, Corpus Christi, Texas
Mr. A. Maceo Smith, 2407 Thomas Avenue, Dallas, Texas
Mr. Garfield Roy, General Delivery, Kilgore, Texas
Mr. Jesse Allen, Route 2, Box 2, Longview, Texas
Mrs. Minnie Lee Smith, P.O. Box 470, Gladewater, Texas
Miss Marie Stephens, Route 2, Box 332, Longview, Texas
Mr. Raphus Allen, Box 361, Longview, Texas
Mr. Aubrey Green, Sr., Route 2, Box 55, Gladewater, Texas
Mrs. Mary Anderson, Route 2, Box 300, Longview, Texas
Mrs. Barnette Webb, 405 Miller Street, Gladewater, Texas
Mrs. Catherine Snoddy, Route 2, Box 121, Longview, Texas

DEAR FRIENDS: This is to advise you, and each of you, that the case *Norma Joyce Allen* v. *B. E. Masters*, As President of the Kilgore Junior College (commonly known as the Kilgore Junior College Case) is set for trial in the United States District Court for the Eastern District of Texas in the Federal Courthouse at Tyler, Monday, January 17, 1955, at 9 A.M., Judge Joe W. Sheehy presiding.

All parties interested in this matter are hereby urged to see to it that the Plaintiffs in this case:

Norma Joyce Allen
Racine Mabarba Allen
Aubrey Green, Jr.
Freddie O. Anderson
Noble Jones
Lavaro Jean Richardson
Marie Stephens, and
Bernice Webb
Maggie Elnora Smith
Alma Jean Smith
Tommie Lee Snoddy

are present at the court house in Tyler not later than 9 o'clock so that we may have a brief time to talk with them before the trial.

As you know, this matter was set for trial on the 11th of October, 1953, and we were unable to go to trial because none of the witnesses appeared. If this happens again, we will have no other choice but to dismiss the suit.

If any of the Plaintiffs are available, the Attorneys would like to have an opportunity to talk with them on Friday, January 14, 1955 at the Community Center at Longview, Texas. Please advise us if this can be arranged. If not, be sure to have them in court at 9 o'clock, January 17th, 1955.

Sincerely yours,

s/d U. Simpson Tate
U. SIMPSON TATE.

UST: glw.

EXHIBIT No. 13

(PLAINTIFF'S EXHIBIT No. 42)

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE,
20 West 40th Street, New York 18, N.Y.

Official Organ: The Crisis

MEMORANDUM

To: All branch offices of the NAACP in Texas.
From: U. Simpson Tate, Regional Counsel.
Date: May 26, 1954.
Subject: Admission of qualified Negroes to publicly supported junior colleges.

On Monday, May 24, 1954, the Supreme Court of the United States declared that qualified Negro applicants are now entitled to attend state supported junior colleges in Texas.

The ruling came as a result of a suit filed against the Hardin Junior College in Wichita Falls in September 1951. We tried this suit in November 1951 and won a favorable decision.

The Junior College officials appealed to the United States Circuit Court of Appeals at New Orleans. In November 1952 that Court affirmed the lower court decision and said that all qualified Negro applicants to junior colleges in Texas were entitled to attend those colleges on the same terms as other qualified applicants without regard to race or color.

With grim determination to deny Negroes the right to attend the Hardin Junior College, the officials of the Hardin Junior College then took their appeal to the highest Court of the land, and lost.

The law is now clear without any doubt whatever that all graduates of an accredited high school in Texas may attend any and all of the publicly supported junior colleges in this State.

This is to urge all of our branches, especially those in Paris, Tyler, Kilgore, Texarkana, San Antonio, San Angelo, Amarillo, Corpus Christi and in every other community where there is a publicly supported junior college, to exert a strong effort to get qualified high school graduates to make application to attend these fine institutions.

Negro youth have been attending the Amarillo Junior College since 1951, the Howard County Junior College at Big Spring and the Del Mar Junior College at Corpus Christi since 1952 and the San Angelo Junior College since September 1953. So, we have both the law and local practice in our favor. By all means get qualified students to make application to junior colleges in your community.

If they are denied admission, inform this office at once.

EXHIBIT No. 14

(PLAINTIFF'S EXHIBIT No. 51)

JUNE 8, 1950.

Mr. M. C. JAMISON, Jr.,
302 West Hockhiem,
Yoakum, Texas.

DEAR MR. JAMISON: The procedure for developing and filing suit through the regional office is as follows:

1. The theory of the suit must be approved by the local Branch, that is the Branch must pass a resolution favoring the suit and pledge itself to support the suit financially.

2. The Branch then calls upon the State office at Dallas through Mr. A. Maceo Smith, secretary of the Texas Conference of NAACP at 2011 North Washington Street. This may be done by completing and mailing to him Forms I and II, which are enclosed. These are mere forms and may be reduced to letter by the Branch or the form itself be used.

3. After this has been done the State Conference will approve or reject the suit and pledge itself to assist financially and/or otherwise in the prosecution of the suit.

4. The Branch will then use Form III to secure plaintiffs for the lawsuit. As to plaintiffs we usually prefer at least ten. Each one will fill out one of the forms, No. III, inclosed herein. The space in line one should give the authority to Attorney C. B. Bunkley, Jr., of Dallas, Texas.

The first thing to be done is for the Branch to work out means for raising the amount of money necessary to support the suit together with expenses for attorneys as occasion demands for coming into the community. To carry a case through the Trial Court it will be necessary, in my opinion, to raise approximately $600.00. Mr. Maceo Smith will inform you of the amount to be paid into the State treasury. The other will be used for expenses.

When you pay the amount required to be paid into the State treasury, the State will pay all attorney's fees, filing fees, and other items incident to the suit.

Since you are concerned primarily with courses and transportation it might be that we can get these adjusted through conferences without the necessity of a lawsuit. If you feel that this can be done, and I do, let me know the courses that you want, the routes on which you wan bus service, and the name of the Superintendent of your school district and at the proper time I will contact him by letter. In that way we will raise the question and I believe we can get results.

If it can be done this way the community will save both in time and in money. If this will not suffice we have no other choice than to go into the Courts.

I hope that this is sufficient to get you started. If you need additional information let me know.

Sincerely yours,

U. SIMPSON TATE,
Regional Special Counsel.

UST:bg.
Inclosures.

EXHIBIT No. 15

AUGUST 6, 1951.

Rev. R. H. HINES,
118 Harrison,
Amarillo, Tex.

DEAR REV. HINES: At a meeting of some of the State officers of NAACP, on Saturday, August 4, 1951, at Lake Texoma, a group of citizens from Wichita Falls indicated that the Wichita Falls Branch wishes to commence suit against the Wichita Falls Junior College to gain admission of Negroes thereto.

Thurgood Marshall was present, and after prolonged discussion, it was agreed that where an individual branch feels that it wants to commence such a suit, notwithstanding the pendency of the Texarkana case, and the Branch concerned is willing to assume the financial responsibility of the suit, as the Wichita Falls Branch has done, it was agreed that such a suit would be filed.

This letter is to inform you on the change of position by the State organization on this question. We are not urging you to commence suit against your Junior

College, we are simply advising you that if your Branch wishes to assume the expense of such a suit to the extent of $1,500 or $2,000, as the Wichita Falls Branch has done, the State organization is willing to go along with you through the trial court with the understanding that if the necessity for appeal arises, only one such suit will be appealed.

Due to the heavy expense of the Sweatt case, which cost approximately $22,000 to try it, with an additional $11,000 to finance his education, it has become necessary for local branches to bear a larger share of the cost of future suits. I hope that this makes the position of the State organization clear on this question. If there are other questions which present themselves to you, let us hear from you.

Sincerely yours,

U. SIMPSON TATE,
Regional Special Counsel.

UST: bg.

EXHIBIT No. 16

(PLAINTIFF'S EXHIBIT No. 54)

OFFICE OF SOUTHWEST REGIONAL COUNSEL,
2600 Flora Street, Dallas, Tex., December 6, 1955.

Mr. THURGOOD MARSHALL,
Director and Counsel,
NAACP Legal Defense & Educational Fund, Inc.,
107 West 43d Street,
New York, N.Y.

DEAR THURGOOD: In compliance with your request, I hereby submit a program of proposed legal action during the coming year in the five States that comprise the Southwest Region.

ARKANSAS

1. We have pending a suit recently filed against the Van Buren, Arkansas, School Board.
2. Proposed legal action will include:
   (a) A suit against the Pulaski County Public Schools. Pulaski is the county in which Little Rock is situated. This suit will not include independent school districts.
   (b) A suit against the North Little Rock School District.
   (c) A suit against the Little Rock School District.
   (d) Suits are being planned for the West Memphis area, which is the most difficult area in Arkansas.

LOUISIANA

1. We have pending suit against Orleans and St. Helena Parishes.
2. Proposed legal action will include;
   (a) Suits against three remaining liberal arts colleges.
   (b) Suits against several trade schools at the secondary level, but owned and operated by the State of Louisiana.
   (c) Suits against strategically chosen school boards in Eastern Louisiana contiguous to Mississippi.

NEW MEXICO

Since New Mexico has entered upon what appears to be a good faith program of desegregation, no suits in that state are now in contemplation.

OKLAHOMA

1. We have a suit pending against the Red Bird Dependent School District, tried before a three-judge court on November 30, and dismissed for want of jurisdiction. The record is now being typed and will be submitted to you for review to determine whether an appeal to the Supreme Court is justified.

2. Proposed legal action will include:
(a) A suit against the Vian Independent School District.
(b) A suit against the Arcadia Independent School District.
(c) It is now evident that many of the small school districts in rural Oklahoma have done little or nothing toward integration. At least three suits will be planned against such school districts.

TEXAS

1. We have suits pending:
(a) against the Dallas Independent School District, and
(b) against the Mansfield Independent School District * * * now being processed for appeal.
2. Proposed legal action includes:
(a) Transportation—We have now the case of a Negro woman who has been arrested, tried, and convicted for violating the separate coach ordinance of the City of Austin, Texas. The Texas State Conference of Branches will appeal that case through the State courts in an effort to get the statue knocked out. Other transportation cases or negotiations are planned for Dallas, Houston, and other urban areas to completely test and destroy racial segregation in urban and interurban transportation in Texas. This is a must for Texas in 1956.
(b) Public Health—Negotiation is now in progress with the Parkland Memorial Hospital in Dallas aimed at the elimination of racial segregation in this institution. If negotiations fail, legal action is in contemplation.
(c) Recreation—During 1955 two pivotal suits were won against the City of Beaumont and the City of Fort Worth outlawing racial segregation in public recreation. We have a statute making racial segregation mandatory in the thirty-odd State owned and operated parks in Texas. We shall undoubtedly strive to test that law in 1956. In the past we have found it extremely difficult to get persons to undertake to use the sensitive facilities such as restaurants, swimming pools, dance facilities, and the like. We shall continue to press that issue.
(d) Public Education—We have the following proposed suits:
(1) A suit against the Wichita Falls Independent School District to be filed this month.
(2) A suit against a junior college in Harris County.
(3) A suit against the University of Houston.
(4) A suit against the Houston Independent School District.
(5) We are developing plans for at least five suits in East Texas, in Gilmer, Texarkana, and other East Texas areas.
(6) A suit against the LaMar State College at Beaumont.

This, in general, defines the legal program in the Southwest Region for 1956. It will certainly not be diminished. There is a likelihood that it will be expanded, particularly in Oklahoma and Texas. I hope that this is sufficiently detailed to meet your immediate needs. Necessarily, the pace will be quickened during 1956 because the people are becoming more restive.

Sincerely yours,

U. SIMPSON TATE.

UST: glw.
cc: Mrs. L. C. Bates, Mrs. D. A. Combre, Dr. H. W. Williamston, Dr. H. Boyd Hall, Mr. Clarence Laws, Mr. Edwin C. Washington, Jr.

EXHIBIT No. 17

PLAINTIFF'S EXHIBIT No. 56

OCTOBER 3, 1950.

Mr. R. E. GARRETT,
601 East 3rd Street,
Taylor, Texas.

DEAR MR. GARRETT: This is to confirm our telephone conversation of Tuesday, October 3, 1950, with respect to Mr. Nathaniel Hancock.

I will be in Taylor, Texas, between 5:00 and 6:00 p.m. on Thursday, October 5, 1950. I will travel by automobile, and the Branch will be expected to take care of my expense at 5¢ per mile for the distance covered.

As a result of our telephone conversation, it was agreed by attorney C. B. Bunkley, Jr., 814½ North Good Street, Dallas, Texas, telephone TAylor 1687, and I will represent Mr. Hancock, that there will be no fees for my services; that I will be entitled to expenses, and that Mr. Bunkley will be entitled to a reasonable fee to be agreed upon by himself and the Branch.

Mr. Bunkley will be with me Thursday. You may discuss the fees with him at that time. I will see to it that his fees are not unreasonable.

I have just talked with Mr. A. Maceo Smith, secretary of the Texas Conference of NAACP, and he informs me that your Branch has been inactive, and that you have not reported your membership, or met your assessment to the State Conference.

The offer which was made to you above to represent Mr. Hancock without fee carries with it the condition that the Taylor Branch must bring itself into active standing with the State Conference and meets its financial obligation thereto in order to entitle it to any services from the Regional office. It is my suggestion that you Mr. Smith immediately at his office, 2011 North Washington Avenue, and make arrangements to clear your Branch with his office. This is a condition precedent to any services being rendered to your Branch by this office.

Sincerely yours,

U. SIMPSON TATE,
Regional Special Counsel.

UST: bg

EXHIBIT No. 18

PLAINTIFF'S EXHIBIT No. 60

JUNE 3, 1953.

MR. ARTHUR DEWITTY,
1206 B East 12th Street,
Austin, Texas.

DEAR ARTHUR: I received your letter of May 28 concerning my appraisal of Senator A. M. Aikin of Paris, Texas. I do not know Senator Aikin personally. Therefore, I would hesitate to undertake to pass judgment on him.

I am fairly familiar with the Gilmer-Aikin Bill. I have now and have had during the entire life of the Bill a feeling that a portion of the Bill is unconstitutional. I refer particularly to that part of the Bill which provides certain privileges such as the number of teachers, supervisors and even money for school districts on the basis of the average daily attendance of students compiled separately for colored and white. It is my firm conviction that this section of the Bill and all such sections are unconstitutional. I have been waiting patiently for a suit on that very issue and I have the feeling that I've got one in the making. This does not necessarily say that Senator Aikin is entirely responsible for the discrepancies in this measure. But I am thoroughly convinced that he knows that they are in there and that they didn't get in there by accident.

There is one thing on which we can agree. I am thoroughly convinced that we should get rid of Shivers. I feel this quite strongly even though we might not profit very much by the exchange.

In the matter of determining who shall be the standard bearer, I would tend to follow the advice of those of you who have lived in Texas longer than I.

I suggest that you write Attorney W. J. Durham, 2600 Flora Street, Dallas to secure his thinking on the matter. Here in Dallas I have tended to follow Durham's leadership in such matters because of his experience in Texas which far exceeds mine.

Sincerely yours,

U. SIMPSON TATE.

UST:glw.

EXHIBIT No. 19

Mr. JOHN J. JONES,
P. O. Box 801,
Texarkana, Texas.

2600 FLORA STREET, *July 19, 1956.*

DEAR MR. JONES: I received your letter of July 13 in which you discuss your contact with the Texarkana City Council concerning the use of recreational facilities there. This matter received wide publicity in the papers. I think that you and your committee deserve high praise for your action.

Since the City of Texarkana is already in financial difficulty, I don't think we are going to have to worry about any effort to provide dual facilities. We also have the advantage of having won a similar case last year on the same question. So it seems that the law is soundly in our favor.

In order that we may be quite sure of ourselves, I think it is going to be necessary to make a tender. The simplest gesture will be enough. We will have to do this in order to establish that some citizen of the community has been injured by the ruling. There is a rule of law that no one can complain about a statute, ordinance or administrative ruling who has not been injured by it. So, if you can get a few Negro children and/or adults to simply go to the swimming pool or any other activity in the park and offer to use it and be rejected, we are in business.

If you want me to come to Texarkana and advise with you further on this matter, please let me know and I will gladly do so.

As to your suggestion about bringing Rev. Martin L. King into Texas for a tour, I should think that that matter should be discussed with Mr. Edwin C. Washington, Jr., the Field Secretary, who would be in charge of arranging and conducting same, and maybe with the State Executive Committee. There is one thing we have got to watch and that is that it might be disastrous to bring him here during the summer. If sufficient interest can be engendered, I can see how such a project could be entered into some time after Labor Day.

It was good to see you at the Convention and I hope to see you again soon.

Sincerely yours,

U. SIMPSON TATE.

UST:glw.

EXHIBIT No. 20

MARCH 20, 1949.

Dr. B. E. HOWELL, *Vice President*
[Reporter's note: Deletion here]
Mr. DONALD JONES, *Regional Secretary,*
Mrs. DONALD JONES, *Secretary,*
Dallace Branch NAACP,
Dallas, Texas.:

On page 1, Section 6 of the Dallas News for Sunday March 20, 1949, there appears an illustration and an announcement that D. W. Griffith's Birth of a Nation will be shown at the Telenews Theatre beginning Friday March 25, 1949—it appears to me that this is something against which the Dallas Branch should throw all of its strength.

You certainly know that the picture is historically inaccurate; it is inflamatory and harmful to racial relations; it has been barred in more than 110 major cities throughout the United States for these and other reasons.

When it was offered to the public in Washington about 1938 we were able to get it banned there by first appealing to the City Commissioners and the Major of Police; we had a preview showing of the play before some 100 leading citizens representing organizations of all descriptions, and by a vote of that group our position was sustained; that did not convince the Commissioners and the Corporation Counsel, and we informed them that if it went on we would throw a picket line around the theatre; this did not convince them, and we did picket the theatre, but by that time the public had been so well informed that the picket line was entirely effective, and the play ran one night only and has never returned to the District of Columbia.

It appears to me that this is a nice, clean project which the NAACP can take on and gain, I believe, a large body of public support if the true story of the picture is told.

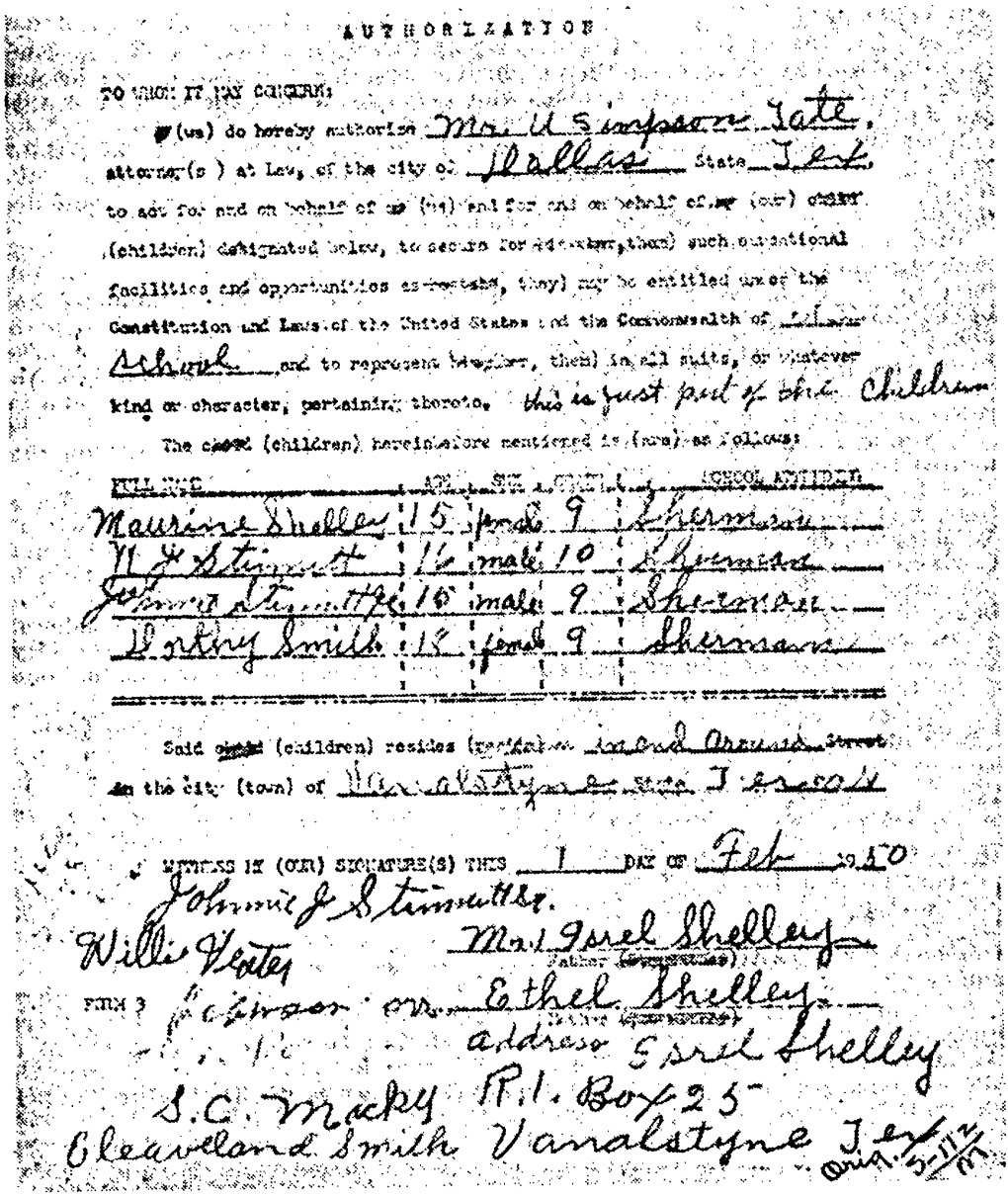
I regret that I shall not be here to help you make this fight, but I think it is one that you can win and thereby render a service to the community.

Respectfully yours,

U. SIMPSON TATE.

EXHIBIT 21

PLAINTIFF'S EXHIBIT 98



AUTHORIZATION

TO WHOM IT MAY CONCERN:

I (we) do hereby authorize Mr. U Simpson Tate, attorney(s) at Law, of the city of Dallas State Texas, to act for and on behalf of me (us) and for and on behalf of my (our) child (children) designated below, to secure for him (her, them) such educational facilities and opportunities as he (she, they) may be entitled under the Constitution and Laws of the United States and the Commonwealth of Texas

Church and to represent him (her, them) in all suits, or whatever kind or character, pertaining thereto. this is just part of the Children

The child (children) hereinbefore mentioned is (are) as follows:

FULL NAME	AGE	SEX	GRADE	SCHOOL ATTENDED
Maurine Shelley	15	female	9	Sherman
W J Stinnett	14	male	10	Sherman
Johnnie Stinnett	16	male	9	Sherman
Dorthy Smith	13	female	9	Sherman

Said child (children) resides (married) on Second Around Street in the city (town) of Vanalstyne State Texas

WITNESS MY (OUR) SIGNATURE(S) THIS 1 DAY OF Feb 1950

Johnnie J Stinnett.

Willie Yeates

Mr Israel Shelley

Father (Guardian)

FIRM Pearson OR Ethel Shelley

Mother (Guardian)

address Israel Shelley

S.C. Mackey R.I. Box 25

Cleaveland Smith Vanalstyne Tex

Orig. 5-11-50

EXHIBIT No. 22

AUGUST 1, 1952.

Please direct reply to: Southwest Regional Office NAACP, Anderson Building, 1718 Jackson Street, Dallas 1, Texas.

EARLE W. FISHER,
Research Asst., Washington Bureau.
WALTER P. OFFUTT, Jr.,
Church Secretary.
JAMES W. IVEY,
Editor, The Crisis.

DEAR BRANCH OFFICER: We are sending you what we believe to be some good news. We think further that it is useful news. It is useful, because it presents a means by which your family, your friends, and others in your community can find a high type of education for their children at a lower cost.

There are those who always doubt that these things can be done, but they are being done every day—let us not doubt the future. These things have been done.

Remember a right GAINED and not USED is No right at all.

If there is a junior college near you, encourage young people to apply to admission. If it is not the Howard County Junior College or the Amarillo Junior College or the Corpus Christi Junior College which are already accepting Negroes, DISCUSS your plans with this office before you move into a fight.

We have the KNOW How to help you. Do not go off before you are ready. But do not stand still. We can help you to get ready.

If you live near Amarillo, Corpus Christi or Big Springs by all means try to get children to go to those junior colleges. Lets use our privileges.

If you live near Wichita Falls, Texarkana or Kilgore get children ready to apply. Write this office and let us know and we will help you to do the job right.

Some will say that you cannot do it, but the facts prove that we can. We have done it and the white community has shown a readiness to advance with us. We have more friends in the white race than you might think for.

Sincerely yours,

(s) U. S. TATE.

EXHIBIT No. 23

(PLAINTIFF'S EXHIBIT No. 224)

SEPTEMBER 13, 1955.

DEAR TATE: I am sorry but I have exhausted every effort I know to find a plaintiff for the case which you talked to me about. I have contacted all the persons whom I know could assist us but they either were not interested in the project or they too were unable to make the required contacts; anyway they claimed to have tried.

I shall continue to try but thought I should let you know so if there are other sources which may be available which you can risk the Ass'n. to you could use same. Messrs. Hilliard and Taylor tried also. It seems that most students are already enrolled and adults are not interested in trying it.

I hate to fail you but I did do my best.

EXHIBIT No. 24

PLAINTIFF'S EXHIBIT No. 484

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TEXAS, TEXARKANA DIVISION

CIVIL ACTION NO. 366

WILMA DEAN WHITMORE, A MINOR, BY HER SISTER AND NEXT FRIEND, KATY COLTER, ET AL., PLAINTIFFS, VS. H. W. STILWELL, AS PRESIDENT OF TEXARKANA JUNIOR COLLEGE, ET AL., DEFENDANTS

Original: Wm. H. Brewer, Official Court Reporter, United States District Court, Eastern District of Texas, Tyler, Texas.

DIRECT EXAMINATION

By Mr. Raffaelli:

Q. Your name is U. Simpson Tate?

A. That is correct.

Q. And you are the attorney for the Petitioners in Intervention in this matter?

A. Yes, sir.

Q. Jessalyn Gray and Steve Poston? Did you, Counsel, ever see Jessalyn Gray or Steve Poston or Steve Poster as he is named in this petition?

A. No, sir; I never had.

Q. Until they walked in the Courtroom just now?

A. I never had.

Q. Do you know Jessalyn Gray's father, Barrett Gray?
A. I don't.
Q. Or Steve Poston's grandfather, James Poston?
A. I don't.
Q. Who contacted you in regard to this suit?
A. Mr. John J. Jones, of Texarkana.
Q. Did he state to you that Jones had been asked by these Plaintiffs or by their guardians or by their grandfather or by any of them to contact you in their behalf?
A. He stated to me that they had asked him as a representative of the National Association for the Advancement of Colored People to assist them in preserving and procuring their civil rights to attend Texarkana Junior College and he in turn asked me to represent them.
Q. Then, your sole contact with these Plaintiffs or their fathers, parents, or any of them, was through John J. Jones?
A. That is correct.
Q. And you filed this suit at his request?
A. And also through a Mr. Montgomery, of Texarkana.
Q. Was there anyone else that contacted you and asked you to file this suit in behalf of these Plaintiffs?
A. No one else.
Q. You never did come in contact with the Plaintiff?
A. No.
Q. Either by phone, by letter, or in any other manner?
A. No, Sir; no other manner.
Q. Didn't advise them to be here today?
A. No, sir.
Q. As far as you know, they didn't even know of this hearing except through Jones or Montgomery?
A. That is right.
Mr. RAFFAELI. That is all. * * *
trying to get admission for my right, I am willing to let my name be used.
Q. You are just willing to let them use your name even though you didn't know anything about it?
A. I am.
Q. That is your testimony today?
A. That is.
Q. But you didn't know anything about this suit before it was filed or until you read it in the paper?
A. That is right.
Q. You have lived out there at 1506 Caddo for about all your life?
A. No, sir; approximately seven or six years.
Q. Six or seven years; you live there with your grandfather?
A. That is right.
Q. And that is the past six or seven years?
A. That is right.
Mr. RAFFAELLI. That is all.
Mr. TATE. May it Please the Court, I would like to move the Court to dismiss this suit with respect to this Petitioner and ask that they both be dismissed without prejudice so if they want to hire another lawyer, they may.
The COURT. You mean you are disqualifying yourself.
Mr. TATE. Yes, sir.
The COURT. Your Motion will be granted. All right, that puts an end to this matter. Now, just a minute, there has been some testimony here that this Court cannot overlook. And in making this statement that I am going to make, I want to say that as far as this Court is concerned, this type of lawsuit stands on the same basis as any other lawsuit filed in this Court and there are certain rules and demeanor that the attorneys of this bar must follow. I would suggest to you, Mr. Tate, that in the future if you expect to appear in this Court in connection with any of these cases or any lawsuit, regardless of what it is, that you be sure that you are properly employed in the case by the party whom you purport to represent and not by some third party intervening and coming in there.
Mr. TATE. I want the Court to know I appreciate very much the situation.
The COURT. All right.

EXHIBIT No. 25

(PLAINTIFF'S EXHIBIT No. 398)

[Reporter's note: Deletion here]
TEXARKANA, U.S.A., *August 20, 1954.*

MR. THURGOOD MARSHALL,
107 West 43 Street,
New York 18, New York.

DEAR MR. MARSHALL: Attached herewith copies of my letters to Mr. U. S. Tate and Mr. W. J. Durham, Attorneys representing A Texarkana College case which was to have been tried in the Federal District Court of East Texas, Texarkana, Texas, August 17, 1954. These letters are self-explanatory, hence as Chief Counsel of the N.A.A.C.P. we are appealing to you to lend whatever assistance is necessary to bring this case to trial.

Thanking you in advance for your consideration.

Very truly yours,

s/ [Reporter's note: Deletion here]
Texarkana Branch, N.A.A.C.P.
[Reporter's note: Deletion here]
Texarkana, Texas.

cc: U. S. Tate, W. J. Durham, A. Maceo Smith.

AUGUST 20, 1956.

A. MACEO SMITH,
2011 North Washington Street,
Dallas, Texas.

DEAR MR. SMITH: Attached herewith copies of my letters to Mr. Tate, Durham, and Thurgood Marshall expressing our disappointment in view of our Attorneys not prepared to go to trial with the Texarkana College case scheduled for trial, August 17, 1954. I would appreciate your conferring with Mr. Tate and Durham and urging that an injunction be filed to prevent the opening of a separate Junior College for Negroes in the Dunbar High School which is planned by the Texarkana College Board of Regents for this term.

Very truly yours,

s/ [Reporter's note: Deletion here]
Texarkana Branch, N. A. A. C. P.
[Reporter's note: Deletion here]
Texarkana, Texas.

cc: U.S. Tate, Thurgood Marshall, W. J. Durham.

AUGUST 20, 1954.

HON. W. SIMPSON,
Chief Counsel,
Texas State Conference of Branches,
N. A. A. C. P., 1718 Jackson Street,
Dallas, Texas.

DEAR MR. TATE: [Reporter's note: Deletion here] as previously announced in view of the fact that Jno. J. Jones had furnished all of the names of the present Texarkana College Board of Regents more than 60 days ago, wherein the case could have been amended, substituting the new members of the Board of Regents for the vacancies caused by the death of R. J. Singleton and the resignation of W. S. Chance.

The Board of Regents of the Texarkana College has planned to establish a Junior College for Negroes in the Dunbar High School Building which we understand is definite, however no public announcement has been made. We cannot sit idly by and permit a Junior College to be opened for Negroes on a separate basis which would fit the purpose of the Board of Regents to apply and make use of approximately $36,000.00 which was voted in a Bond Issue to operate a separate Junior College, hence we urge that you immediately prepare a suit or an injunction to prevent the Board of Regents from carrying out their purpose of utilizing the $36,000.00 Bond Issue and if this money can be utilized in opening the College there will be an additional tax burden on the property owners of Texarkana, Texas, notwithstanding that we know under the Supreme Court

decision a permanent separate Junior College cannot operate exclusively for Negroes. It is now very late and you will have to act immediately in order to prevent the opening of separate college for Negroes.

May I have your instruction giving me the necessary steps to take at this end to supply you with the necessary information to base your suit.

Present names of Board of Regents, Texarkana, College, John Holton, Pres., Thomas Bain, Secretary, Hale Parker, Burnham Jones, Aubrey Woods, W. R. Kelley, and W. L. Williams.

Very truly yours,

s/s [Reporter's note: Deletion here]
Sect., Texarkana Branch, NAACP.
[Reporter's note: Deletion here]
Texarkana, Texas.

cc: W. J. Durham, Thurgood Marshall, A. Maceo Smith.

AUGUST 27, 1954.

W. J. DURHAM, ESQ.,
2600 Flora Street,
Dallas, Texas.

U. S. TATE,
1718 Jackson Street,
Dallas, Texas.

DEAR FRIENDS: [Reporter's note: Deletion here] of the Texarkana Branch sent me copies of his correspondence with you of August 20th concerning the Texarkana Jr. College matter.

I would appreciate it very much if you would let me know just how this case stands and what possibilities there are to protect the rights involved so that we will not have another monument set up to Jim Crow education.

I, of course, do not know the circumstances of the proposed hearing of August 17th and I assume that there was something involved which forced the postponement. At any rate, I would appreciate a report on the matter.

Sincerely,

(s) THURGOOD MARSHALL,
Special Counsel.

TM: abs.
cc: A. M. Smith [Reporter's note: Deletion here], John J. Jones.

Mr. LIPSCOMB. At the outset of this examination, Mr. Chairman, I read into the record a limited number of findings of fact of Judge Cunningham which held that the activities of the NAACP and the NAACP Legal Defense and Educational Fund, Inc., in Texas was so meshed, intertwined, and interrelated as to make one the alter ego of the other.

As to the NAACP Legal Defense and Educational Fund, Inc., of which the nominee was the executive director and counsel, the court further found that the NAACP Legal Defense and Educational Fund, Inc., was established by the National Association for the Advancement of Colored People for the purpose of providing——

Senator JOHNSTON. What document are you reading from?

Mr. LIPSCOMB. Now reading from the findings of fact and conclusions of law in the Texas court which were offered into the record at the previous hearings, but were not mentioned in detail.

Senator JOHNSTON. I just want it identified.

Mr. LIPSCOMB. Yes, sir. That it was established by the National Association for the Advancement of Colored People for the purpose of providing a subsidiary of colored people for the purpose of providing a subsidiary which could carry on expensive portions of the activities of the National Association for the Advancement of Colored People and offer its contributors tax-free treatment of their contributions.

Further:

22. U. Simpson Tate was the attorney and salaried employee of the NAACP Legal Defense and Educational Fund, Inc., having the title of Southwest Regional Counsel.

23. While acting in such capacity on numerous occasions, the said U. Simpson Tate did counsel with, advise and instruct the above-named local branches in Texas of the National Association for the Advancement of Colored People, which activity constituted the primary activity of the said U. Simpson Tate in his position as Southwest Regional Counsel.

24. That in counseling with said local branches in Texas, the said Tate used and employed stationery of the NAACP Legal Defense and Educational Fund, Inc., and signed letters as the Southwest Regional Counsel.

25. That the said U. Simpson Tate, while employed by the NAACP Legal Defense and Educational Fund, Inc., worked for and carried out the directives of the National Association for the Advancement of Colored People intrastate commerce within the State of Texas.

26. That the said activity of U. Simpson Tate was known to his employers, the NAACP Legal Defense and Educational Fund, Inc., and to the people who he represented, the National Association for the Advancement of Colored People, during all of the times pertinent to this lawsuit.

27. That such New York corporations ratified the acts and activity of the said U. Simpson Tate in the transactions of intrastate business for each such corporation.

30. That prior to this suit, the National Association for the Advancement of Colored People through its branches and controlled associations including the NAACP Legal Defense and Educational Fund, Inc., has practiced law as a corporation in violation of the laws of Texas.

31. The said corporation and its affiliates retained legal counsel on a salary basis for the prosecution of lawsuits in which the Association had no direct interest.

32. That one of the primary purposes of the said Association and its affiliate organizations was the maintenance of lawsuits on behalf of others in which said Association or its affiliate organizations had no direct personal, monetary, or legal interest.

33. That the said Association and its affiliates promoted and encouraged the filing of lawsuits; that it required all such lawsuits to be approved by officials of the said Association, a corporation, and that it refused financial assistance to any lawsuit over which it would not have complete management and control.

34. The National Association for the Advancement of Colored People and its dominated NAACP Legal Defense and Educational Fund, Inc., its branches and its state and regional conferences have, contrary to the laws of Texas, practiced barratry within the State of Texas.

35. That pursuant to directives from the National Association for the Advancement of Colored People, its branches and its employees and affiliated organizations instituted a course of conduct designed toward bringing a large number of lawsuits, that this course of conduct as implemented on the local level with the knowledge, consent and direction of the National Association for the Advancement of Colored People, was, by the solicitation and procurement of plaintiffs for lawsuits in designated areas, which such lawsuits were to be filed, maintained and prosecuted by the National Association for the Advancement of Colored People and its affiliated NAACP Legal Defense and Educational Fund, Inc., and its branches and State and regional organizations.

36. That pursuant to said directives of the National Association for the Advancement of Colored People, its employees, and the employees of the NAACP Legal Defense and Educational Fund, Inc., or their representatives, began a systematic campaign to secure refusals of the usage of public facilities in the State of Texas in order that additional lawsuits could be instituted.

37. That repeated letters of the salaried attorney of the NAACP Legal Defense and Educational Fund, Inc., to the various branches and branch officers of the National Association for the Advancement of Colored People made requests that the branches find qualified plaintiffs for the suits concerning public facilities who would be willing to appear in court as plaintiffs.

I will forego reading 38 through 55, but I ask that they appear in the transcript at this point, Mr. Chairman.

Senator JOHNSTON. They shall become a part of the record.

(Paragraphs 38 through 55 of the Findings of Fact and Conclusions of Law are as follows:)

EXHIBIT No. 26

38. That the various officers, members and employees of the said Defendants sought out and solicited individuals in Gregg County, Texas, for the purpose of using them as plaintiffs in lawsuits against the Kilgore Junior College District; that the said officers, members and employees solicited individuals and their parents to bring an action against the Kilgore Junior College District, Civil Action No. 1481 in the United States District Court for the Eastern District of Texas, sitting in Smith County, Texas, styled *Norma Joyce Allen, et al,* Plaintiffs v. *B. E. Masters, et al.,* Defendants, which said lawsuit would not have been brought by the plaintiffs but for the solicitation of the Defendants herein.

39. That such lawsuit was instigated, financed and prosecuted by the Defendants herein.

40. That the said U. Simpson Tate, in order to obtain plaintiffs for lawsuits to be prosecuted by the National Association for the Advancement of Colored People issued a memorandum dated May 26, 1954, urging all branch officers of the National Association for the Advancement of Colored People in Texas to get students to make application to attend certain colleges, with the direction that if these students were denied admission to said colleges, the officers were to inform his office at once, and that this memorandum was made for the purpose of soliciting plaintiffs for lawsuits to be brought, financed, and prosecuted by the National Association for the Advancement of Colored People and its affiliates.

41. July 6, 1950, U. Simpson Tate directed Dr. H. Boyd Hall of Corpus Christi, Texas, to find, secure and solicit two or more persons who would agree to make application to attend Del Mar Junior College, Corpus Christi.

42. That C. Simpson Tate, acting as a representative for the defandants herein during the period from June 1947 through March 1956 acted in concert with Rev. R. H. Hines, of Amarillo, in soliciting various individuals for permission to use their names as plaintiffs in lawsuits in the Amarillo area.

43. That said U. Simpson Tate, acting for and on behalf of the Defendants herein, instructed Rev. A. H. Wilson of Galveston, Texas, to secure children to tender for registration and admission in certain schools in Galveston, Texas; that such tender was to be for the formulation of a lawsuit against the Galveston Schools.

44. That on August 15, 1951, U. Simpson Tate, Regional Special Council, directed Mr. T. R. Register of Tyler, Smith County, Texas, to make a demand for use of Tyler State Park; that pursuant to such instructions, Mr. Register and others from the City of Tyler presented themselves to the State Park, were refused and a lawsuit instituted against the State of Texas; that such solicitation was for the very purpose of instituting a lawsuit.

45. That on August 15, 1951, a letter was written by U. Simpson Tate to Mr. G. A. Carroll of Corpus Christi, Texas, directing him to secure plaintiffs for lawsuits against the State of Texas in connection with the Corpus Christi State Park; that this letter was in all respects and for the same purposes as that sent to Mr. T. R. Register, as stated above.

46. That on July 19, 1956, in a letter to John J. Jones of Texarkana, Texas, U. Simpson Tate, acting for and on behalf of Defendants herein, instructed the said Jones to secure a few negro children or adults to be refused the use of a park in Texarkana.

47. That pursuant to these instructions and other prior directives, persons under the direction of members of the Texarkana branch of the National Association for the Advancement of Colored People, did present themselves to the park of Texarkana.

48. That the said U. Simpson Tate, acting in concert with John J. Jones of Texarkana, Texas, and in behalf of Defendants in this lawsuit, solicited plaintiffs for lawsuits against the Texarkana Junior College, Texarkana, Texas.

49. That the solicitations of the said U. Simpson Tate and John J. Jones resulted in the filing of a Plea in Intervention by the said U. Simpson Tate in the District Court of the United States for the Eastern District of Texas sitting in Tyler, Smith County, Texas, Civil Action No. 366, entitled *Wilma Dean Whitmore* v. *H. W. Stillwell.*

50. That in said Plea in Intervention, said U. Simpson Tate, as a representative of the Defendants herein, purported to represent one Steve James Poston and one Jessalyn Yvonne Gray.

51. That the said U. Simpson Tate at the time the Plea in Intervention was filed and at the time a hearing on said matter was held, did not have authority to represent said persons, and the said intervenors named in said Plea in Intervention has no knowledge of such proposed action, had never given their consent for U. Simpson Tate to file an action in their behalf or for any one else to do so.

52. That the said Steve Poston and Jessalyn Gray had never seen U. Simpson Tate prior to the time of the hearing on the Plea of Intervention.

53. That on June 1, 1955, U. Simpson Tate forwarded petitions to the Houston branch of the National Association for the Advancement of Colored People with instructions to have citizens sign said petitions to be presented to the Houston School Board in order that a predicate might be laid for the filing of a lawsuit against such Board.

54. That in so doing, said U. Simpson Tate was soliciting plaintiffs for a proposed lawsuit and using the members of the Houston branch for the National Association for the Advancement of Colored People as his agents for such solicitation.

55. That in the fall of 1955, U. Simpson Tate, together with Edwin C. Washington, Jr., and Dr. L. E. Smith, Chairman of the Legal Redress Committee of the Houston Branch of the National Association for the Advancement of Colored People, solicited plaintiffs for proposed lawsuits against the University of Houston and other public schools of Houston, Texas.

Mr. LIPSCOMB. Finding 68 is the only place wherein the nominee is mentioned by name. It states:

That at the time of the presentation of the request to examine the books, records, documents, and accounts of said corporation, Thurgood Marshall, acting for and on behalf of said corporations, refused to permit the authorized representative of the Attorney General to examine certain letters and correspondence, but while sitting at his desk mutilated such documents by cutting out signatures and addresses and then delivering said mutilated copies to the represenative of the Attorney General.

STATEMENT OF HON. PHILIP A. HART, A U.S. SENATOR FROM THE STATE OF MICHIGAN

Senator HART. Mr. Chairman, is that the only place in which the nominee is designated by name in this Texas order?

Mr. LIPSCOMB. Other than as attorney of record and witness.

Senator HART. That is a pretty onus description in the course of conduct and I think it would be good for the record to repeat what, in fact, occurred and then to inquire whether or not this is not exactly what the U.S. Supreme Court said that he had a perfect right to do.

When the Attorney General asked for the names, you did not want to disclose them and, in the *Alabama* case, the Supreme Court said that was all right.

Mr. MARSHALL. That is true.

Senator HART. It is a little bit of an onus when put in this sense.

Mr. MARSHALL. The other point was used by the attorney general of Texas; that is the names were used by the attorney general of Texas, whatever names he could get, and the record shows that in many instances, the people who were branch officers in some small town would be set upon by an assistant attorney general, two State highway men and the sheriff and they would walk into the house and seize all the records.

Senator HART. Thank you.

Senator JOHNSTON. Was that ever done?

Mr. MARSHALL. Yes, in several instances.

Senator JOHNSTON. In what case?

Mr. MARSHALL. The evidence in the *Tyler* case. They had in Texas what is known as a court of inquiry where individuals were picked up, carried before a magistrate without counsel, and examined without counsel, examined without an opportunity to obtain counsel.

Senator JOHNSTON. What record is made of that?

Mr. MARSHALL. It is the *Tyler* record, the same record that Mr. Lipscomb has been quoting so frequently from.

Senator JOHNSTON. If that had happened, you would have had that put into the record by witnesses, would you not?

Mr. MARSHALL. Yes, sir.

Senator JOHNSTON. Do you find that in the record here?

Mr. MARSHALL. As I remember, it is in the record.

Senator JOHNSTON. If it is not in the record, it did not exist, is that true?

Mr. MARSHALL. I know those people who told me that. I am sure people testified to it. I think there was evidence from Dallas and one other place, and also Texarkana.

Senator JOHNSTON. Have you put that all in the record?

Mr. LIPSCOMB. I have not put the whole case in because it is voluminous and includes some 14 volumes of testimony and about 14 volumes of exhibits.

Mr. MARSHALL. If I might also say, Mr. Chairman, on one occasion at least, a representative of the attorney general's office in a well coordinated move, went by airplane to a town, alerted the State highway patrol and/or Texas Rangers and the local sheriff and went into the house of the president of one of the local branches and seized all of the books that she had.

It was evident that in Dallas people were picked up, carried before what is known as a court of inquiry, without counsel or ability to get counsel.

In Texarkana if I remember, two young teenagers were interrogated by Texas Rangers. In all instances, these men are armed.

I do not know whether the record will show this or not, but it is true that this case was opened with television cameras; that is the trial and during the entire period of the trial it was broadcast over the local radio station with everybody seeing it.

For example, there was a microphone like this sitting on the counsel table.

That is the way that trial was conducted.

Senator JOHNSTON. Do you know who had the television brought in?

Mr. MARSHALL. The television and radio was brought there by agreement of the court and all of the counsel.

Senator JOHNSTON. Counsel from both sides?

Mr. MARSHALL. Counsel on both sides agreed because we were in Tyler, Tex., and we had figured that in order to have a lawsuit there was no use in disagreeing.

Senator JOHNSTON. Do you know who first requested the television?

Mr. MARSHALL. I do not, sir. It might have been the radio and television companies themselves. I should imagine that is who did it.

Senator JOHNSTON. Proceed.

Mr. LIPSCOMB. As to the inspection of those documents, I am not a member of the bar of the State of Texas, but as I understand Texas law, they have a special character, writ of inspection of some sort such as the current attorney general applied in the Billie Sol Estes investigation out there where they go in through a procedure hat is not common in any other State that I know of in making inspections of records.

Mr. MARSHALL. That is my understanding, Mr. Lipscomb, and plus the fact that they have a right to come up to another State—if you are a corporation operating in the State of Texas like when Mr. Grant came to my office under the Texas law he had a right to come to New York and inspect the records of the New York corporation.

Mr. LIPSCOMB. But this is a procedure that under the law of Texas, let us say is authorized and valid so far as the attorney general of Texas is concerned.

Mr. MARSHALL. I assume it is authorized. But I question the legality of a hearing without counsel.

Senator JOHNSTON. You know whether or not they were refused counsel if they requested it?

Mr. MARSHALL. As I remember, Senator, the statements made by the witness was if a Texas Ranger walks in and says come along, you go with him. I do not think there was an instance where counsel was asked for. I would not go that far and say that, sir, one way or the other.

Senator JOHNSTON. Proceed.

Mr. LIPSCOMB. No. 69.

Senator JOHNSTON. Is there a convenient place to stop? We have to stop at 12 noon.

Mr. LIPSCOMB. With this one, Senator:

That the national corporations failed and refused to allow the authorized representative to examine its books, records, and documents in accordance with the law of Texas.

There is the point you were making, Judge, in regard to the application of the Texas law.

Mr. MARSHALL. The record will show when they went to Tate's office, he threw his files open.

Mr. LIPSCOMB. No, I am speaking of finding 69 is in line with the statement you just made in regard to the inspection of the records of your office in New York and all this particular finding says is that the inspection was not in accordance with the law of the State of Texas.

It did not mention any other jurisdiction.

Let me reread this:

That the national corporations failed and refused to allow the authorized representative to examine its books, records, and documents in accordance with the law of Texas.

That follows the finding that was made in regard to you insofar as you were concerned.

Mr. MARSHALL. I assume that I was sustained by the supreme court in the Alabama case on that.

Mr. LIPSCOMB. This was prior to the decision of the Alabama case.

Mr. MARSHALL. That was prior to the decision in the Alabama case.
Mr. LIPSCOMB. Yes.

That the Defendant, the National Association for the Advancement of Colored People and its affiliated organizations have engaged in political activities contrary to the laws of the State of Texas.

That the said National Association for the Advancement of Colored People, through its local branches, its Texas State conference of branches, and its southwest regional conference, has attempted to influence legislation through the maintenance of active lobbyists both in Washington, D.C., and in Austin, Tex.

That concludes the series of findings I wish to read into the record, Mr. Chairman.

Senator JOHNSTON. It is understood then, that I will get in touch with, or Mr. Davis will get ahold of you with regard to when we will meet again, either Monday or Wednesday of next week.

Mr. LIPSCOMB. There is one other matter I should dispose of, Mr. Chairman.

Senator JOHNSTON. Very well.

Mr. LIPSCOMB. Senator Keating, in regard to the previous discussion that we had on *NAACP* v. *A. S. Harrison*, the Virginia case, I would like, without any comment, to offer for the record at this point the analysis that you mentioned as having seen and prepared in regard to this, and without any comment on my part.

Senator KEATING. Is it a staff memorandum?

Mr. LIPSCOMB. Yes. I would offer it anyhow, but since you mentioned it I said I did want to explain the approach that I was taking in *NAACP* v. *Harrison*.

Senator KEATING. It is a very peculiar procedure, Mr. Chairman, but I certainly will not object.

If I might just have a word here. I have had no objection to any of these exhibits or any others that counsel has in mind going into the record in the hope that that would save time.

I do want to make this observation. I have not yet heard anything which in any way bears on Judge Marshall's qualifications for the judicial service.

If counsel is suggesting something that Judge Marshall must have the responsibility for every little action that is taken by any lawyer who has been appearing in an NAACP case, he is imposing a standard of responsibility which certainly goes beyond any point of reasonableness.

Judge Marshall's conduct and his ethical standards have not been questioned in these hearings. It is ridiculous to suggest that he may be disqualified for judicial service because some other lawyers who appeared in an NAACP case may or may not have done things which counsel considers questionable and where there is absolutely no showing that Judge Marshall has anything to do with the conduct at issue.

Again I say, Mr. Chairman, it is Judge Marshall's character, his ability and his judicial temperament which should be under consideration here and I hope that there is no intent to transfer a hearing on these issues into an investigation of the NAACP or all of the lawyers who have appeared in behalf of that organization.

We did not investigate Judge Elliott or Mr. Cox' law partners when we held hearings on their nominations.

We did not investigate all of the activities of the Civil Rights Division of the Justice Department before we voted to confirm Judge Harold Tayler.

The line of questioning in this case is unprecedented and from what I have heard so far, Mr. Chairman, I must say, entirely irrelevant.

Senator JOHNSTON. Was there something else?

We will have to adjourn according to the rules of the Senate. They said we could meet until 12.

Senator CARROLL. Might I make an observation here? If these are going into the record, these are excerpts culled from other documents.

Mr. LIPSCOMB. This particular offer here is just the opinion in the *Harrison* case, in Virginia. It is now in the Supreme Court.

Senator CARROLL. I think by a failure to examine the statements, I do not want our acquiescence to be used against us at sometime by saying we approve of this.

Senator JOHNSTON. It stands on its own qualification.

Senator KEATING. Furthermore, Mr. Chairman, this Virginia case is now pending in the Supreme Court of the United States and I interposed that question as to whether it was appropriate to go into the case with it pending in the Court.

I certainly do not want to make it appear that any evidence is being covered up here and it seems to me that if the chairman rules that it should go in, it should go in.

Senator JOHNSTON. I am going to rule it should go in, but this has no bearing on the outcome of the trial anyway.

Senator KEATING. Mr. Chairman, as I understand it, if the full committee does not meet on Monday, then it is agreeable for this subcommittee to meet Monday morning and complete its hearing on that date?

Senator JOHNSTON. The agreement is that we will either meet Monday or we will meet Wednesday, one or the other.

Senator KEATING. And complete the hearings at that time?

Senator JOHNSTON. We will try to.

The papers counsel referred to may be inserted in the record at this point.

(The documents referred to are as follows:)

EXHIBIT NO. 27

ANALYSIS OF NAACP, ET AL. V. A. S. HARRISON, JR., ATTORNEY GENERAL OF VIRGINIA, ET AL.

NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC. V. A. S. HARRISON, JR., ATTORNEY GENERAL OF VIRGINIA, ET AL. (202 VA. 142)

I

The NAACP and the NAACP Legal Defense and Educational Fund, Inc., filed separate actions in the Circuit Court of the City of Richmond to secure a declaratory judgment construing Chapters 33 and 36, Acts of the Virginia Assembly, Extraordinary Session 1956. Thurgood Marshall was one of the lawyers representing the NAACP Legal Defense and Educational Fund, Inc., in the second described suit.

The two suits were heard and considered together in the court below by the consent of all parties, on the appellants' bills; their exhibits, which included a transcript of the evidence, exhibits, the majority and dissenting opinions of the three-judge federal court, and the judgment entered in the case of *NAACP* v. *Patty*, 159 F. Supp. 503 (judgment vacated and remanded *sub nom*, *Harrison*,

et al. v. *NAACP*, 360 U.S. 167); the answers and exhibits of the appellees; and *ore tenus* testimony on behalf of the appellees and the NAACP, except one deposition taken on behalf of the NAACP. No testimony was taken on behalf of the Fund.

The trial court held, (1) that chapters 33 and 36 do not violate the constitutional guarantees of freedom of speech and assembly, due process of law, and equal protection of the laws under the Fourteenth Amendment; (2) that the evidence shows that the appellants, their officers, affiliates, members, voluntary workers, and attorneys are engaged in the improper solicitation of legal business and employment in violation of chapter 33 and the canons of legal ethics; (3) that attorneys who accept employment by appellants to represent litigants in cases solicited by the appellants, and in which they pay all costs and attorneys' fees, are violating chapter 33 and the canons of legal ethics; and (4) that the appellants and those associated with them advise persons of their legal rights in matters in which the appellants have no direct interest, and whose professional advice has not been sought in accordance with the Virginia canons of legal ethics, and as an inducement for such persons to assert their legal rights through the commencement of or further prosecution of legal proceedings against the Commonwealth of Virginia, any department, agency, or political subdivision thereof, or any person acting as an employee for either or both or any of the foregoing, the appellants furnish attorneys employed by them and pay all court costs incident thereto, and that these activities violate either chapter 33 or 36, or both.

The Supreme Court of Virginia considered the findings of the lower court at length and in great detail and the opinion was delivered by Judge I'Anson, affirming in part and reversing in part the trial court. The court described at length the relationship between the NAACP; the NAACP Legal Defense and Educational Fund, Inc., which it refers to hereinafter as "the Fund," and the Virginia State Conference of NAACP Branches, and how these organizations operated in the State of Virginia with reference to initiating and prosecuting various types of legal actions.

Particular attention herein is directed to those portions of the opinion which concern the Fund. The court found:

"The Fund has a small membership and no affiliates. Its financial support comes from contributions solicited by letters and telegrams from New York City. The purpose of the Fund, as stated in its certificate of incorporation, is as follows:

"'(a) To render legal aid gratuitiously to such Negroes as may appear to be worthy thereof, who are suffering legal injustice by reason of race or color and unable to employ and engage legal aid and assistance on account of poverty.

"'(b) To seek and promote the educational facilities for Negroes who are denied the same by reason of race or color.

"'(c) To conduct research, collect, collate, acquire, compile, and publish facts, information and statistics concerning educational facilities and educational opportunities for Negroes and the inequality in the educational facilities and educational opportunities provided for Negroes out of public funds; and the status of the Negro in American life.'

"The director-counsel of the Fund is charged with the duty of carrying out the purposes set out in the charter and the policies fixed by its board of directors. He has under his direction a legal research staff of six full-time lawyers who reside in New York City but who may be assigned to places out of New York. In addition to the full-time legal staff, the Fund has five regional counsel, including one residing in Richmond, Virginia, at an annual retainer of $6,000. The Fund also has at its disposal social scientists, teachers of government, anthropologists, and sociologists who are used principally in cases involving school litigation.

"The regional counsel of the Fund residing in Richmond, Virginia, is also a member of the legal staff of the Conference and the legal committee of the NAACP.

"The Fund has been approved by the State of New York to operate as a legal aid society because of the provisions of the barratry statute of New York, but counsel stated it does not operate as such. A representative of the Fund testified in the case of the *National Association for the Advancement of Colored People* v. *Patty, supra*, that it furnishes legal assistance when a Conference lawyer requests it or when it is revealed from an investigation, made by the New York office through its regional counsel or one of the lawyers on the State

Conference staff, that discrimination exists because of race or color. All costs and expenses incurred in such suits brought on behalf of Negroes are borne by the Fund. The assistance given may be in the form of providing lawyers to assist Conference staff lawyers in the trial of a case, or in the preparation of briefs."

The court first held that the language of chapter 33, which amended former statutes defining malpractice by attorneys in such fashion as to broaden the solicitation of legal business to include acceptance of employment or compensation from any person or organization not a party to a judicial proceeding and having no pecuniary right or liability in it and to make it an offense for any such person or organization to solicit business for any attorney was neither vague nor ambiguous, but to the contrary showed a clear legislative intent further to control the evils of improper solicitation of legal business for the benefit of attorneys.

The court next held that there is no merit in the contention of appellants that the statutes cannot be construed to apply to their activities. It stated:

"* * * The services of attorneys selected by the NAACP, its Conference and the Fund are offered at no cost to the prospective litigants as an inducement to institute suits. The litigants and attorneys, however, must adhere to a policy of permitting the NAACP, the Conference and the Fund to direct and control the litigation.

"The absence of the usual contact between many of the litigants and the attorneys instituting proceedings is indicative of the control of the litigation by the NAACP and the Conference.

"Since the appellants do not operate as legal aid societies, the financial ability of litigants to prosecute their own cases is not considered by the NAACP, the Conference, and the Fund in soliciting litigants. A person does not have to be indigent for the NAACP, the Conference, and the Fund to pay all costs of litigation.

"The communications and activities of the NAACP, the Conference, and branches, indicate their plans, methods and procedures in obtaining litigants, and may be summarized as follows:

"* * * Mr. Thurgood Marshall, chief legal counsel of the NAACP, has said that the hardest job his staff has had in bringing equal-education suits has been to persuade Negro teachers and representative Negro parents to stand as plaintiffs. * * *. (The National Association for the Advancement of Colored People; A Case Study in Pressure Groups, St. James, Exposition Press, Inc., at p. 107.)

"In short, the activities of the NAACP, its Conference and the Fund clearly show that they are engaged in fomenting and soliciting legal business in which they are not parties and have no pecuniary right or liability, and which they channel to the enrichment of certain lawyers employed by them, at no cost to the litigants and over which the litigants have no control."

The Court further held:

"(3) There is no merit in the appellants' argument that their activities are not what are commonly considered by the legal profession as solicitation of business contrary to the canons of legal ethics. They rely on several cases which are readily distinguishable under the facts from these causes now before us. Typical of the cases cited is *Gunnels* v. *Atlanta Bar Association*, 191 Ga. 366, 12 S.E. 2d 602, 132 A.L.R. 1165.

"In the *Gunnels* case the court upheld the right of the Atlanta Bar Association to furnish counsel to persons who had been victims of sharp loan practices. The attorneys did not receive compensation for their services and the Bar Association did not stand between counsel and client or exercise control over the litigation. The usual and proper relationship of attorney and client existed in that case, which does not exist under the evidence in the causes now before us.

"In referring to the relationship that should exist between attorney and client, in the case of *Richmond Ass'n of Credit Men* v. *Bar Association*, 167 Va. 327, 189 S.E. 153, this Court quoted with approval the following (167 Va. at p. 335, 189 S.E. at p. 157):

"'The relation of attorney and client is that of master and servant in a limited and dignified sense, and it involves the highest trust and confidence. It cannot be delegated without consent, and it cannot exist between an attorney employed by a corporation to practice law for it, and a client of the corporation, for he would be subject to the directions of the corporation and not to the directions of the client.' *Re Co-Operative Law Co.*, 198 N.Y. 479, 92 N.E. 15, 16, 32 L.R.A. (N.S.) 55, 139 Am. St. Rep. 839, 19 Ann. Cas. 879.

"The acceptance of employment by an attorney in cases in which the NAACP, its Conference and branches act as intermediaries in the solicitation of legal business not only violates chapter 33, but also canons 35 and 47 of the canons of professional ethics adopted by this Court on October 21, 1938, 171 Va. p. xxxii.

"Canon 35 reads in part as follows:

"'*Intermediaries.*—The professional services of a lawyer should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between client and lawyer. A lawyer's responsibilities and qualifications are individual. He should avoid all relations which direct the performance of his duties by or in the interest of such intermediary. A lawyer's relation to his client should be personal, and the responsibility should be direct to the client. Charitable societies rendering aid to the indigent are not deemed such intermediaries.' 171 Va. p. xxxii.

"Canon 47 read as follows:

"'Aiding the Unauthorized Practice of law.—No lawyer shall permit his professional services, or his name, to be used in aid of, or to make possible, the unauthorized practice of law by any lay agency, personal or corporate.' 171 Va. p. xxxv.

"In the Ninth Annual Report of the Virginia State Bar, p. 39, is found an opinion, rendered by the Committee on Unauthorized Practice, which is pertinent in these causes. A union retained an attorney on a salary basis to represent all of its individual members in their claims for compensation before the State Industrial Commission. He received no fees from the individuals for such representation. His sole compensation came from the salary paid him by the union. The committee held that the union was engaged in the practice of law without a license; that it was intervening between the attorney and his clients; and that the atorney was violating the canons of legal ethics.

"Courts from other jurisdictions have held that corporations or associations carrying on activities somewhat similar to those of the appellants were engaged in the illegal practice of law and their attorneys were violating the canons of legal ethics.

"*In re Maclub of America, Inc.*, 295 Mass. 45, 3 N.E. 2d 272, 105 A.L.R. 1360, an automobile association had been formed for the purpose of furnishing its members with lists of attorneys who would perform services for such members free of charge. The attorneys looked to the association for payment, but the association took no part in the direction or control of the case. The court held that the association was engaged in the illegal practice of law; that the relationship of attorney and client did not exist between the association's members and the attorney; that the particular attorney was compensated by the association and subject to its instructions; that the association possessed the right to hire and fire; and that the practice was considered a contract to furnish legal assistance rather than a contract to pay for legal assistance.

"In *People ex rel. Courtney* v. *Association of Real Estate Taxpayers*, 354 Ill. 102, 187 N.E. 823, 826, a corporation was organized to permit united protection of certain taxpayers in matters of taxation and legislation. The owners of real estate were invited to become members by the payment of a fee. Attorneys were selected and paid by the corporation to represent it in taxation litigation and the corporation would determine what questions would be litigated. The court held that, even though suits were brought in the names of individual members, and fees would have cost an individual approximately $200,000, the corporation was engaged in the illegal practice of law.

"For other cases, see *People ex rel. Chicago Bar Association* v. *Chicago Motor Club*, 362 Ill. 50, 199 N.E. 1; (a nonprofit corporation) *Doughty* v. *Grills*, 37 Tenn. App. 63, 260 S.W. 2d 379; *Hildebrand* v. *State Bar of California*, 36 Cal. 2d 504, 225 P. 2d 508; *Atchison, Topeka & Santa Fe Railway Co.* v. *Jackson.* (10 Cir.), 235 F. 2d 390, 393; *In re Brotherhood of Railroad Trainmen*, 13 Ill. 2d 391, 150 N.E. 2d 163, 167."

The next two findings uphold the constitutionality of chapter 33 against the appellants' assertion that this chapter violates the provisions of the First and Fourteenth Amendments of the Constitution of the United States. The findings in regard to chapter 36 are not pertinent to the purposes of this memorandum. The court did, however, find that portions of chapter 36 were unconstitutional because of the possible denial of due process and denial of the right of freedom of speech and denial of equal protection of the laws. Thurgood Marshall was on the brief for appellant NAACP Legal Defense and Educational Fund, Inc., in this case before the Supreme Court of Virginia.

II

ORAL TESTIMONY OF THURGOOD MARSHALL

The transcript of the record from the Circuit Court of the City of Richmond, Commonwealth of Virginia, contains excerpts of the record from the United States District Court for the Eastern District of Virginia, Richmond Division, in *Harrison* v. *NAACP*, No. 127, October term 1958. This transcript is now before the Supreme Court of the United States on writ of certiorari to the Supreme court of appeals of the Commonwealth of Virginia, October term 1961, No. 44. In an appeal from the decision of the Virginia Supreme Court of Appeals herein discussed, Thurgod Marshall was a witness before the United States District Court and testified that he lived at 409 Edgecomb Avenue, New York City; that he was a lawyer by profession and that his present occupation was director counsel of the NAACP Legal Defense and Educational Fund, Incorporated, one of the plaintiffs; that he had held this particular position since 1952, and that prior to 1952, from 1940 to 1952, he was special counsel of the NAACP Legal Defense and Educational Fund, which was organized in 1940 as a corporation under the laws of the State of New York. (Transcript pages 346–347).

In describing the operation of the Legal Defense and Educational Fund, Mr. Marshall said:

"Q. Mr. Marshall, what are your duties as director and counsel of Legal Defense?

"A. Well, the board charges me with the responsibility of keeping the work within the policy adopted by the board moving along, with general supervisory powers over the staff and the other people working people working for us.

"Q. Just how does Legal Defense go about the execution of this program that you made reference to a few minutes ago?

"A. Well, it operates more or less in this fashion: We get either a letter or a telephone call or telegram from either a person or a lawyer saying that they have got a problem involving discrimination on the part of race or color and it [fol. 375] appears to be a legal problem. Then the question is as to whether or not we will help. If it is a worthwhile problem, we look into it. The majority of the letters we get from prisoners in penitentiaries we have reached the point, after years, where we can look at them and tell whether they are worth bothering about, and if they are we will look into them. If the investigation conducted either from the New York office or through one of our local lawyers reveals that there is discrimination because of race or color and legal assistance is needed, we will furnish that legal assistance in the form of either helping in payment of the costs or helping in the payment of lawyers fees, and mostly it is legal research in the preparation of briefs and materials of that type. We are getting calls all the time.

"Q. Mr. Marshall, I believe you testified that you have a staff of attorneys in New York City?

"A. We have six full time lawyers.

"Q. Are they permanently stationed there?

"A. They are permanently stationed in New York. They might go out on assignment.

"Q. How many employees do you have stationed outside of the City of New York?

"A. We have four lawyers that are on a retainer basis: One in the District of Columbia; one in Richmond, Virginia; one in Dallas, Texas, and one in Los Angeles" (Transcript pages 350–351).

In discriminating between the operation of the NAACP and the Legal Defense Fund he said, at page 352:

"The main distinction between the two organizations, as I see it, is that the Legal Defense Fund does only legal and educational work and to have nothing to do with lobbying or influences on legislation."

It was Marshall's recollection that the Defense Fund had been interested in approximately forty cases decided by the United States Supreme Court since 1940. (Transcript page 354.)

In answer to a question by Judge Soper as to the necessity for having two separate corporations, Marshall said that it was apparent that the legal defense work should not have any connection with propaganda, etc., etc., for influencing litigation, that they should be separated. He said further:

"The other point was, and there were two or three people in the group not of those I mentioned, that said that there should be some opportunity for the tax-exempt standpoint. And with the two points combined again, Mr. Springarn and a few of us decided to set up a separate corporation. In all frankness it was set up with the complete understanding—the NAACP knew we were going to do it and everybody on that committee or incorporators was a member of the Board of the NAACP—and it was thought that they could go along down the line together as two organizations. As of approximately three and one-half years ago, the Treasury Department of the United States Government started an investigation and it was apparent that we should not have any connection at all. That is why the complete severance.

"Q. What difference did it make to the Government?

"A. Well, I don't know, sir, but when the Internal Revenue people raised questions——

"Q. Did it have to do with the taxation question?

"A. Yes, sir. Because the NAACP does not have the right for its contributors to deduct their contributions.

"Q. Why not?

"A. They never qualified before it. They were denied it. But the Legal Defense Fund does.

"Q. In view of the fact that there are certain political activities connected with the NAACP, I suppose.

"A. They lobby for legislation.

"Q. Necessarily so.

"A. Yes, sir. Ours, we don't do it at all.

"Q. That throws light on it. But how about your cooperative activities since you have been divorced, legally?

"A. As of last year, Mr. Wilkins, as he testified, tendered his resignation. Shortly thereafter, I resigned as Special Counsel of the NAACP. As of early this year, the Defense Fund Board passed a resolution that nobody could be a member of that Board who either was a member or officer [fol. 398] of the NAACP. So that is completely cleared up now and they are completely separated.

"In actual fact, as is apparent here in the courtroom and all, Mr. Carter, who was formerly with us as Assistant Special Counsel, is now General Counsel of the NAACP and there is no question in the world that he and I discussed legal matters together, and we work together on lawsuits. There is no question about that, even though he is General Counsel for the NAACP.

"Q. Is Mr. Carter General Counsel for the National body?

"A. Yes, sir; of the NAACP.

"Q. Where are your offices?

"A. His office, the NAACP's office, is at Wilkie Building, 20 West 40th Street; the Legal Defense office is 107 West 43rd Street. Several years ago, we rented office space in the NAACP, but we decided that was bad.

"By Judge Hoffman:

"Q. As a practical matter, I assume that Mr. Carter has free access to the research material of the Defense Fund?

"A. Yes, sir. And, in turn, we ask him to do research" (Transcript pages 371, 372, 373).

Marshall next explained that the Fund had regional counsels covering the following districts: One in Washington for the District of Columbia and Maryland; one in Richmond for Virginia, North Carolina and South Carolina; one in Dallas for Louisiana, Texas, Oklahoma, Arkansas, and New Mexico, and one in Los Angeles for the area west of the Rockies. He was asked:

"Q. Now, do those four lawyers representing those four regions report directly to you or to someone else in your organization?

"A. Directly to me.

"Q. In all cases?

"A. In all cases, but not regularly. The one in Texas reports regularly.

"Q. Does the Texas man report to you at any particular time?

"A. He tries to report around the end of the month.

"Q. Each month?

"A. Practically.

"Q. Do you indicate to him the character of the reports to be made to you?

"A. I just want to know what is going on, and most of it is confidential suggestions as to what is going on, and it involves strategy, what is going on here and there. It is not the type of report that would be made public; it is a lawyer-to-lawyer type of thing.

"Q. It is a confidential report?

"A. Yes, sir.

"Q. Who is your counsel in Dallas?

"A. U. S. Tate.

"Q. What full name does he go by?

"A. I think it is Ulysses Simpson. He goes by U. S. Tate" (Transcript pages 373, 374).

Then at page 375 of the transcript, as regarding U. S. Tate, he states further:

"Q. I understand that U. S. Tate, in Dallas, reports to you each month, and for how long a period has he been doing that?

"A. Since he has been employed down there. I don't know how long he has been on the staff.

"Q. Does he send reports at any time more frequently than once a month?

"[fol. 401] A. Oh, surely, if something urgent comes up, I might call him on the telephone."

Mr. Marshall was then handed a photostatic copy of what purported to be a communication to him dated December 6, 1955, from the office of the Southwest Regional Council in Dallas, which he could not identify offhand as having been actually received by him. After a recess, he stated to the court that it was a letter that had been identified as having been received by him in the case of the *State of Texas* v. *The NAACP and The Legal Defense Fund*. The letter describes suits that have been filed or that are contemplated in Arkansas and Louisiana. As to Louisiana cases, he was asked this question:

"Q. Then he states:

" 'Proposed legal actions will include (a) suits against three remaining liberal arts colleges.'

"Was that planned strategy to get plaintiffs for those actions or suits, or did you have them already?

"A. We had them right after the LSU case. They came in and wanted to know—as matter of fact, in one of the institutions the faculty and the student body of the institution sent a committee asking us why we didn't do something, and we told them we would not institute a lawsuit without some students.

"Q. This is another contemplated suit:

" '(b) Suits against several trade schools at the secondary level but owned and operated by the State of Louisiana.'

"Do you know what he referred to there?

"A. Schools of Technology, cases of which have been filed.

"Q. And his next item is marked '(c)' and is at the top of the second page:

" 'Suits against strategically chosen school boards in Eastern Louisiana contiguous to Mississippi.'

"Did you understand that to mean, Mr. Marshall, that plaintiffs were in hand for those particular suits?

"A. As a matter of fact, I assumed that was true. But I don't believe those cases were ever filed because there [fol. 406] was a gang of cases in those parishes where Negroes were being taken off of the registration books. If I remember correctly, they were so busy with those they never got around to the others.

"Q. Do you know whether in those particular instances, that is, those 'chosen school boards in Eastern Louisiana contiguous to Mississippi,' there were particular plaintiffs, people seeking to be plaintiffs and asking your aid?

"A. When I received that, I assumed that Tate would not have been interested other than that.

"Q. Did you pursue that to find out?

"A. I remember telephoning him about the registration cases there, but I don't remember talking to him about that. I could have, but I don't remember it."

The colloquy continues:

"Q. Since you never took any cases for anybody unless you were asked to do so, would not that suggest to you that Mr. Tate was going around looking for plaintiffs in order to use them in 'strategically located' areas?

"A. At that time I would not call—I mean, when letters came in from these men, I know they knew what the rules were and I assumed they followed them. I wouldn't expect them in each instance to say, 'I have plaintiffs in this case, they have come and asked me and they are interested.' I wouldn't expect that, but I assumed that.

"Q. You never aided anyone in the bringing of one of these suits unless you yourself had passed on it?
"A. Unless I passed on it?
"Q. Yes.
"A. I wouldn't doubt that some of these lawyers will take up a case that is similar to another case that they have had if they know the policy and without asking me. As a matter of fact, several cases Tate took up, he did without my permission.
"Q. You observed that he has enumerated here in this letter numbers of specific locations in which suits were contemplated, but in this instance there was a matter of strategically chosen school boards. You still thought that that involved individual plaintiffs and that he had the plaintiffs already?
"A. I would say that I saw nothing there to suspect to the [fol. 407] contrary. I mean, when you read the language it is according to how you read it and what you know about it.
"Q. Yes, and I read it my way.
"A. Yes, and I read it my way" (Transcript pages 377–381).

Marshall's testimony next turns to the case of *Sweatt* v. *Painter*, which has been discussed at length in Part I of this Memorandum. He was asked:

"Q. Were you familiar with the means of raising funds for carrying on that litigation?
"A. Yes.
"Q. Will you state to the Court just what took place?
"A. Insofar as the funds were concerned, they were, as I remember, paid for by my office, if I remember correctly. They had a local lawyer. The local lawyer was named W. J. Durham and I assisted in the trial of that case with about half a dozen other lawyers.
"Q. Do you recall what was involved, financially, in the preparation and trial of that case?
"A. It was considerable. We blocked it out. It was a huge amount because we had considerable expert testimony from law school professors throughout the country, from anthropologists, from sociologists, and we had a sociologist working full time. I don't know what it cost.
"Q. And that case was taken to the Supreme Court of the [fol. 408] United States. Are you familiar with an effort to raise additional money under the Sweatt Victory Fund Campaign?
"A. I heard about it.
"Q. You are not, yourself, personally familiar with it?
"A. No, because they did not want me to be in it.
"Q. They told you they didn't want you to be in it?
"A. In pretty explicit Texas terms.
"Q. That should be emphatic enough. Did you, yourself, understand that they were raising or trying to raise a fund of $50,000?
"A. Yes, I think that was correct.
"Q. Did you understand that they proposed entering into a contract—
"Judge Soper: Who is 'they'?
"Mr. Mays: Anyone.
"Q. ——proposed to enter into a contract with Sweatt concerning paying him money to go to the University?
"A. I don't know anything about that, of my own knowledge. All of my connections with Sweatt were in the legal case, and after he got into law school. My relationship with him was to explain to him what he had to do. And then when he succeeded in not passing, I had to sort of worry with him then. But any relationship with anything that went on in Texas, whatever was done, I don't know anything about it except I did hear of some funds, and I do remember a figure of $50,000. As to what the fund was, the details, I don't know a thing about it.
"Q. Does this refresh your memory? Do you know of any contract entered into with Hermon Suveatt whereby he was to be paid an annual salary?
"A. No, sir. Well, to be perfectly frank, I heard this in the Texas case. I mean, that is another case.
"Q. But you had nothing to do with such a contract?
"A. No, sir" (transcript, pages 381–383).

Mr. LIPSCOMB. Perhaps we can go a little overtime on Monday or Wednesday. I will do my best to try to finish.

Senator KEATING. It is up to the chairman and not counsel.

Mr. MARSHALL. Mr. Chairman, if I may, this is the first time I have asked you, but if it could be possible to hold the hearing on Monday, it would help me very much.

The reason I say that, I am due to participate in an off-the-record conference involving the State Department and the Attorney General's Office, and it is out of town, and I would have to leave Monday afternoon.

I would be perfectly willing to cancel it, however.

Senator JOHNSTON. We will try to work to your convenience as much as we can.

The committee is adjourned to meet either on Monday or Wednesday.

(Whereupon, at 12 o'clock noon, the subcommittee recessed, subject to the call of the Chair.)

NOMINATION OF THURGOOD MARSHALL

FRIDAY, AUGUST 17, 1962

U.S. SENATE,
SUBCOMMITTEE ON NOMINATIONS OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee (composed of Senators Johnston, McClellan, and Hruska) met, pursuant to call, at 10:30 a.m., in room 2228, New Senate Office Building, Senator Olin D. Johnston presiding.

Present: Senator Johnston.

Also present: Senators Hart and Keating.

L. P. B. Lipscomb, Esq., member of the professional staff, Committee on the Judiciary.

Senator JOHNSTON. The subcommittee will resume its hearings. I notice we have a Senator here, Senator Dodd. I believe he has a statement he wanted to make at the opening today.

STATEMENT OF HON. THOMAS J. DODD, U.S. SENATOR FROM THE STATE OF CONNECTICUT

Senator DODD. I would like to make a brief statement this morning, Mr. Chairman.

Since these proceedings have consumed so much time already, I shall make my remarks as brief as possible.

Senator JOHNSTON. I would appreciate it if you could. We are trying to finish today. If we do not finish today, I am meeting Monday morning.

Senator DODD. I certainly do not want to delay it. If there is any chance you can finish today, I will not say a word.

Senator JOHNSTON. No, sir; I did not mean that. If you have anything you want to say, say it.

Senator DODD. It is known that Judge Marshall was nominated for the U.S. court of appeals almost a year ago and since last October, he has been serving under a recess appointment. It is known that he came to the court with one of the most brilliant legal careers in the history of the bar. It is known that since assuming his post on the Federal bench, he has served with the greatest distinction. It is also known, Mr. Chairman, that the reasons for the unconscionable delay in his confirmation has nothing to do with his legal competence or with his qualifications for this post. I believe, therefore, that it is not the qualifications of Judge Marshall that are on trial, but rather the qualifications of the Judiciary Committee itself. I earnestly hope that these subcommittee proceedings may be concluded today, that the nomination of this great American may be favorably reported and

immediately brought to the floor of the Senate, where I am sure it will be speedily and overwhelmingly confirmed.

One way or another, this nomination will be brought to the Senate floor within the next few weeks. Let us all hope that it may be done in full observance of the traditional Senate procedures.

I thank you, Mr. Chairman. I am sorry I have delayed you even this long.

Senator JOHNSTON. Senator Dodd, we are glad to have you come here this morning and make those remarks.

Senator DODD. Thank you.

Senator KEATING. Mr. Chairman, may I simply say that I agree emphatically with all of the fine statements of our distinguished friend from Connecticut and join with him in the assurance to the country that this nomination will be acted upon in this session.

Senator DODD. I thank my colleague.

Senator JOHNSTON. We will now resume where we left off.

Mr. Lipscomb will proceed.

Mr. LIPSCOMB. Judge Marshall, the 1961 edition of Martindale-Hubbell Law Directory, volume 2, under "New York Lawyers," lists you as being the director-counsel of the NAACP Legal Defense and Education Fund and parenthetically stated:

> Admitted in Maryland; not admitted in New York.

Have you ever been admitted to practice in the State of New York either of the other two courts comprising the Circuit Court of the Second Circuit of the United States?

STATEMENT OF THURGOOD MARSHALL, NOMINEE TO BE U.S. CIRCUIT JUDGE FOR THE SECOND CIRCUIT—Resumed

Mr. MARSHALL. No, sir. I have never been admitted to either of the three State courts. The only State court that I am a member of is the State of Maryland. I am, however, a member of the bar of the U.S. Court of Appeals for the Second Circuit, which is the circuit I am sitting on.

Mr. LIPSCOMB. You moved from Maryland to New York to join the legal staff of the NAACP, did you not?

Mr. MARSHALL. I moved there for that purpose. I went there temporarily for 6 months.

Mr. LIPSCOMB. And you have resided in New York continuously since 1938?

Mr. MARSHALL. Between 1938 and 1939.

Mr. LIPSCOMB. In the New York Times of Sunday, October 6, 1957, in an article on the NAACP, it stated in part:

> Of 46 cases the NAACP has taken to the U.S. Supreme Court, it has won favorable rulings in all but 4. Twenty of these cases have been argued by Mr. Marshall, who joined the NAACP legal staff in 1938. He has lost only two.

In these 20 cases which you argued before the U.S. Supreme Court, you were, in fact, representing individual complainants and not the NAACP, were you not?

Mr. MARSHALL. Yes, Mr. Lipscomb; the rule is that once a case is turned over to a lawyer, the lawyer is bound by the canons of ethics. In those cases, I was not in any sense of the word representing the

client. I have always been a lawyer's lawyer. I was called in by the lawyer who represented the client and I do not know how you connect the two together.

Mr. LIPSCOMB. As the lawyer representing the clients, did you prepare these cases for trial in New York?

Mr. MARSHALL. The ones that I argued I prepared either in New York or Washington. Some of them I prepared in the library of the Supreme Court in Washington.

Senator KEATING. Might I interrupt? I believe there is a live quorum. Am I right?

Senator HART. Yes, Mr. Chairman; I apologize for being late. I was conducting a hearing on two California nominees for the bench of the California district court. I have been notified that the sergeant-at-arms has called for attendance on the floor.

Senator KEATING. I was wondering, Mr. Chairman, if it would expedite matters, if the room is available, if we could continue this hearing in that little conference room right off the floor.

Senator JOHNSTON. I do not know but what you are right. I would hope that we would have a few minutes to meet here again.

Senator KEATING. Might I suggest that the staff see if that room is available? It is big enough, I think, to admit everybody.

Mr. LIPSCOMB. Since 1939, have you participated in the preparation of trial of any case wherein the NAACP did not have a direct interest?

Mr. MARSHALL. I have not directly participated in any—I think you are correct, but I think to put it exactly, I do know, however, I have talked over with lawyers common problems on other cases.

Senator JOHNSTON. We will have to go, then.

Senator HART. Let us go over and then when we have concluded the rollcall, we will go into the conference room and see if the arrangements are made.

Senator JOHNSTON. You will be here, Mr. Lipscomb, and you will so notify the court.

(Whereupon, a brief recess was taken, at the termination of which the hearing was resumed in room S–226, U.S. Capitol.)

Senator JOHNSTON. We will proceed where we left off.

Mr. LIPSCOMB. Judge Marshall has one additional remark he wants to make in regard to the last question propounded.

Mr. MARSHALL. Mr. Chairman, on the question of whether I have handled cases other than NAACP cases, I have discussed it with people and been reminded that on at least two other occasions, once in Chicago and once in the Supreme Court involving a case from Geoergia, I represented the Masons—that is the Masons' Prince Hall affiliation. Those cases were not NAACP cases.

Mr. LIPSCOMB. Was there any one of these cases you have referred to that did not fall into the legal field of what is known as civil rights litigation?

Mr. MARSHALL. Those two did not.

Mr. LIPSCOMB. Those two were not what is known as civil rights cases in their general category?

Mr. MARSHALL. No; the one in Chicago was a case involving a dispute between the grand masters of Masons and the Shriners. The Georgia case involved the Georgia Van Lodge of Prince Hall Masons against a group of bogus Masons.

Mr. LIPSCOMB. With the exception of those two cases, all of your other legal work in reference to these cases that were mentioned in the New York Times of Sunday, October 6, were in the area or field of what we commonly denominate as civil rights?

Mr. MARSHALL. Or civil liberties.

Mr. LIPSCOMB. Or civil liberties.

How many full-time lawyers were under your direction and control on the New York staff of the Legal Defense and Educational Fund at the time you were nominated to the second circuit?

Mr. MARSHALL. Between six and eight.

Mr. LIPSCOMB. Were they lawyers licensed to practice under the laws of the State of New York?

Mr. MARSHALL. Yes, they were; all except one.

Mr. LIPSCOMB. Judge, do you believe that it is possible for a lawyer to practice law in interstate and foreign commerce—that is, to practice without being admitted in either the jurisdiction where the case is prepared or where the case is litigated?

Mr. MARSHALL. It is my understanding, Mr. Lipscomb, that when a lawyer who is a member of the bar of a particular State desires the expert services of another lawyer in another State, he is free to do so and other lawyers are free to participate.

Mr. LIPSCOMB. You have always felt that as far as you were concerned, your work State was the State of Maryland and not the State of New York——

Mr. MARSHALL. I did not hear the word. I thought the State of Maryland was my what State?

Mr. LIPSCOMB. Your work State as far as the practice of law.

Mr. MARSHALL. I did not practice law in Maryland except sporadically.

Mr. LIPSCOMB. Is it not customary when an attorney moves from one State to another, either through comity or by taking a bar examination, to be admitted to the bar in the State where he moves?

Mr. MARSHALL. If he practices in that State.

Mr. LIPSCOMB. You did not practice in New York?

Mr. MARSHALL. I did not.

Mr. LIPSCOMB. Did you prepare briefs in New York?

Mr. MARSHALL. I did.

Mr. LIPSCOMB. Did you give legal advice in New York?

Mr. MARSHALL. I did not.

Mr. LIPSCOMB. You gave no legal advice?

Mr. MARSHALL. Not that I know of. If a lawyer would write me from State X and say in a particular case, this is what happened, I would give him my advice as to whether or not this was a violation of the Constitution.

Mr. LIPSCOMB. Did you draft any pleadings in the State of New York?

Mr. MARSHALL. I helped draft pleadings in the State of New York, but not for cases to be filed in the State of New York.

Mr. LIPSCOMB. Were you a member of the bar in the State in which the case was filed?

Mr. MARSHALL. I was not, but the lawyer who asked me to help was always a member of the bar of that State.

Mr. LIPSCOMB. Mr. Chairman, without further questions along this line, I would like to enter for the record the section of the New York State consolidated laws, which defines practicing or appearing as an attorney at law without being administered and registered.

Senator JOHNSTON. Have you identified it for the record?

Mr. LIPSCOMB. No, sir; it is an official citation, 270, of McKinney's Consolidated Law of New York, Annotated, book 39, part 1.

Senator JOHNSTON. That will become a part of the record.

(The document referred to is as follows:)

Section 270, Book 39, Part 1, of McKinney's Consolidated Laws of New York, Annotated, provides:

"§ 270. Practicing or appearing as attorney at law without being admitted and registered

"It shall be unlawful for any natural person to practice or appear as an attorney at law or as attorney and counselor at law for a person other than himself in a court of record in this state or in any court in the city of New York, or to furnish attorneys or counsel or an attorney and counsel to render legal services, or to hold himself out to the public as being entitled to practice law as aforesaid, or in any other manner, or to assume to be an attorney or counselor at law, or to assume, use, or advertise the title of lawyer, or attorney and counselor at law, or attorney at law or counselor at law, or attorney, or counselor, or attorney and counselor, or equivalent terms in any language, in such manner as to convey the impression that he is a legal practitioner of law or in any manner to advertise that he either alone or together with any other persons or person has, owns, conducts, or maintains a law office or law and collection office, or office of any kind for the practice of law, without having first been duly and regularly licensed and admitted to practice law in the courts of record of this state, and without having taken the constitutional oath and without having subscribed and taken the oath or affirmation required by section four hundred and sixty-eight of the judiciary law and filed the same in the office of the clerk of the court of appeals as required by said section. Provided, however, that nothing in this section shall be held to apply to officers of societies for the prevention of cruelty, duly appointed, when exercising the special powers conferred upon such corporations under section one hundred twenty-one of the membership corporations law. As amended L. 1917, c. 783; L. 1939, c. 822, § 1, eff. June 9, 1939."

Mr. LIPSCOMB. How did you qualify for membership in the New York County Lawyers' Association?

Mr. MARSHALL. As a nonresident member, which meant that I was not a member of the New York bar.

Mr. LIPSCOMB. Were you ever a member of the American Civil Liberties Union?

Mr. MARSHALL. At one time I was on the board of directors of the American Civil Liberties Union.

Mr. LIPSCOMB. What was the length of your membership in that particular organization?

Mr. MARSHALL. Three to five years membership. My membership was in that organization until about a year ago. I mean I was on the board from 3 to 5 years.

Mr. LIPSCOMB. Judge Marshall, you mentioned in your testimony on the opening day of hearings that you were at one time a member of the National Lawyers' Guild. How long were you associated with this organization?

Mr. MARSHALL. From its inception until approximately 1949.

Mr. LIPSCOMB. What official positions did you hold?

Mr. MARSHALL. A member of the board of directors for some years.

Mr. LIPSCOMB. Were you also a member of the National Committee of the International Juridical Association?

Mr. MARSHALL. Yes; for about a year. That was back in 1936 or 1937.

Mr. LIPSCOMB. The reports of the House of Representatives Un-American Activities Committee reveal that the National Lawyers' Guild and the International Juridical Association was cited as Communist-front organizations as early as 1944. In report No. 1311, released March 29, 1944, the committee referred to the International Juridical Association as a Communist front, an offshoot of the International Labor Defense.

The same report also cited the National Lawyers' Guild as a Communist front. Did you know of these citations by the House committee at that time?

Mr. MARSHALL. I heard about them. They mentioned the fact so far as the International Juridical Association and that was only for about a year, back in the thirties.

Mr. LIPSCOMB. Did you know personally or by reputation, A. A. Berle, Jr., Assistant Secretary of State, who was a member of the Lawyers' Guild?

Mr. MARSHALL. I did not.

Mr. LIPSCOMB. He resigned this organization on June 5, 1940, charging that the leadership of the organization was not prepared to take any stand which conflicts with the Communist Party line. Do you agree or disagree with this characterization of the organization by Mr. Berle?

Mr. MARSHALL. As of today I would agree. I will be glad to give my reasons.

Mr. LIPSCOMB. Certainly.

Mr. MARSHALL. Subsequent to that time the Attorney General a few years ago listed it on his list. Once it was listed on the Attorney General's list, I had every reason to believe that the accusations were correct. I believe by that time I was already out of it.

Mr. LIPSCOMB. Were you acquainted with any of these gentlemen: Frank P. Walsh——

Mr. MARSHAL. Yes. I knew him.

Mr. LIPSCOMB. Joseph D. McGoldrick?

Mr. MARSHALL. Not personally.

Mr. LIPSCOMB. Judge Ferdinand Pecora?

Mr. MARSHALL. Not personally; but I knew of him.

Mr. LIPSCOMB. Nathan Margold?

Mr. MARSHALL. Oh, I knew him very well. Morris Ernst was in that group, too.

Mr. LIPSCOMB. They were the only ones carried in this particular list.

The records of the House Committee on Un-American Activities indicate that they also resigned from the Lawyers' Guild on the grounds that it was Communist dominated. Do you recall whether you were in the Lawyers' Guild subsequent to the resignation of these gentlemen?

Mr. MARSHALL. I was a member subsequent to that time. I was never contacted by any of them about this. The first I knew about it

was in the newspaper. I obviously did not have the information then.

Mr. LIPSCOMB. Did you not recognize from your own knowledge and experience that the policies that were being pursued by the National Lawyers' Guild were coincidental with those being urged by the Communist Party?

Mr. MARSHALL. Not to the—there were plenty of exceptions, as I remember. I think the reason I am sure there were exceptions was the fact that I did not resign at that time.

Mr. LIPSCOMB. In 1950 an additional report of the House Un-American Activities Committee further cited the National Lawyers' Guild as a Communist front which is—

a foremost legal bulwark of the Communist Party, its front organizations, and controlled unions—

and which—

since its inception has never failed to rally to the legal defense of the Communist Party and individual members thereof, including known espionage agents.

Do you recall positively whether you were a member of the Lawyers' Guild in 1950 at the time this——

Mr. MARSHALL. I know positively I was not.

Mr. LIPSCOMB. You were not a member of the Lawyers' Guild in 1950?

Mr. MARSHALL. I resigned in 1949, as I remember.

Mr. LIPSCOMB. A list of officers of the National Guild as of December 1949, printed in the House Committee's report on the National Lawyers' Guild released September 17, 1950, page 18, contains the name of Thurgood Marshall, New York City, among the members of the executive board.

That was in December. We are getting close to 1950, Judge, but do you recall whether or not in December 1949 you were actually on the board?

Mr. MARSHALL. Well, let us get it straight. I will get the exact date and then there will be no more worry about it.

October 25, 1949, I resigned.

Senator JOHNSTON. In what way did you get out?

Mr. MARSHALL. I sent a letter to the executive secretary of the Lawyers' Guild. I had not been active in it for about a year and a half, I paid no attention to that until they issued a letter condemning Judge Medina and issued it on the letterhead on which my name appeared as a member of the board and I said that was it and I resigned.

Senator JOHNSTON. That is all you would have, a copy that you sent?

Mr. MARSHALL. I have some extra copies here. That is the only official one I have.

(The letter referred to is as follows:)

OCTOBER 25, 1949.

ROBERT J. SILBERSTEIN, Esq.,
Executive Secretary, National Lawyers Guild,
902 Twentieth Street, N.W.,
Washington 6, D. C.

DEAR BOB: I have just received copy of your letter of October 19th to Judge Medina and copy of the press release issued October 21st on the letter. Although the letter is signed by you as Executive Secretary of the Guild, to the general public it has all the earmarks of official action of the Guild. I am strongly

opposed to this type of action on such an important issue being made without consultation with members of the Board of Directors.

The trial of the eleven Communists and the sentencing of the lawyers involved are matters of great interest to the Bar and Judiciary of this country. Many people have permitted their emotions to run wild one way or the other. However, there are others of us who have been determined to view the case and the sentencing of the lawyers in the light of all available information. I, for one, do not intend to be driven by hysteria to one side or the other. I can see no reason whatsoever for abandoning my longstanding rule of reserving judgment until after I have examined the record in the particular case. I cannot see how we can officially condemn Judge Medina's action until we have had an opportunity to determine whether the facts give support to our views.

I have no doubt that there are other members of the Board of Directors of the Guild, who, despite the natural inclination to view Judge Medina's action as undue pressure or persecution of the lawyers, are nevertheless determined to get the facts from the record in the case. At the least the Board of Directors should have been consulted before any action was taken on this most important issue. I think that placing the Guild on record, as you have done in your letter, especially in view of your statement, "A committee of the National Lawyers Guild is examining the record with the view toward learning what actually occurred and recommending appropriate action" makes us look ridiculous and certainly nullifies the criticism which the letter contains.

I do not feel that I can condone such action and I cannot allow myself to be placed in such a position in the future, and, therefore, I hereby tender my resignation as a member of the Board of Directors of the Lawyers Guild to take effect immediately. I am taking the liberty of sending a copy of this letter to Clifford Durr, President.

Sincerely yours,

THURGOOD MARSHALL.

TM:GS.
CC: Mr. Clifford Durr.

Mr. LIPSCOMB. Judge, were you ever a member or affiliated with an organization known as the American League Against War and Fascism, or as it was later known, the American League for Peace and Democracy?

Mr. MARSHALL. In approximately 1933, they tried to get started in Baltimore, Md., and I never joined it, but I know of its existence as of 1933 and 1934, around the battleship *Emden*, I think it was. They came out to visit and they wanted to picket. When I found it was a group doing it, I stopped associating, because I was not too sure.

Mr. LIPSCOMB. Were you the main speaker at a rally held by this organization in Baltimore in 1936?

Mr. MARSHALL. If that was around the battleship *Emden*, the answer is "Yes."

Mr. LIPSCOMB. Do you recall a man who lived in Baltimore at that time named Joseph M. Nowak?

Mr. MARSHALL. No; I do not. The person who got me there was a Professor Mitchell from Johns Hopkins. I spoke at that meeting opposing the battleship *Emden* and I spoke with the approval of the mayor of Baltimore.

Mr. LIPSCOMB. I read from the testimony adduced before the House Committee on Un-American Activities, "Communist activities in the Baltimore Area," part 3, March 25 and 26, 1954. Mr. Nowak, in response to a question from Mr. Tavenner, page 4145 of these identified hearings, says:

That is right. I know that I was active in it—

referring to the American League.

I know that, for example, I went and I got as a speaker Mr. Thurgood Marshall, who was at that time legal representative of the National Association for the Advancement of Colored People. Why I was picked out, probably because I have known him and he would have said yes to me. He might not have said yes to others. He was the main speaker.

You do not recall that Mr. Nowak?

Mr. MARSHALL. I do not recall him at all, but I do recall specifically that Dr. Broadus Mitchell asked me to speak and I checked with the mayor of Baltimore, Mayor Jackson, about the meeting and he was kind of worried about it and he looked into it. He assured me that it was all right and the reason—maybe I was naive, but the main reason I could see nothing wrong with it was because the man who gave the invocation was a well recognized Catholic priest. I might have been naive.

Senator JOHNSTON. I am going to have to run in and vote. I will be back in about 2 or 3 minutes.

Senator KEATING. My name comes right after yours.

(Brief recess taken.)

Mr. LIPSCOMB. For the benefit of the record, Mr. Chairman, I would like to point out that the American League Against War and Fascism has been cited on five different occasions as a Communist front. The chief descriptive characterization reads:

The American League Against War and Fascism was organized at the first United States Congress Against War which was held in New York City, September 29 to October 1, 1933. Four years later, at Pittsburgh, November 26–28, 1937, the name of the organization was changed to the American League for Peace and Democracy. It remained completely under the control of the communists when the anme was changed, as it had been before.

Senator JOHNSTON. When was it first declared; do you have the date?

Mr. LIPSCOMB. May 28, 1942, was the time when Attorney General Francis Biddle gave the opinion that it was a Communist-front organization.

I ask that there be inserted in the record as exhibit 28 at this point the compilation of public records, files, and publications of the House Un-American Activities Committee as it involves the nominee, Judge Marshall; the citations shown against the American League Against War and Fascism; and a printed transcript of the House Committee on Un-American Activities report on Communist activities in the Baltimore area, part 3, March 23 and 25, 1954, pages 4134 to 4145.

Senator JOHNSTON. That shall become a part of the record.

(The documents referred to are as follows:)

EXHIBIT NO. 28

INFORMATION FROM THE FILES OF THE COMMITTEE ON UN-AMERICAN ACTIVITIES, U.S. HOUSE OF REPRESENTATIVES

OCTOBER 13, 1955.

For: Hon. JAMES O. EASTLAND.
Subject: THURGOOD MARSHALL.

The public records, files, and publications of this Committee contain the following information concerning Thurgood Marshall. This report should not be construed as representing the results of an investigation by nor findings of this Committee. It should be noted that the individual referred to is not necessarily a Communist, a Communist sympathizer, or a fellow-traveler, unless otherwise indicated.

Thurgood Marshall was a member of the National Committee, International Juridical Association, as shown in the pamphlet, "What is the I.J.A.?"

The Special Committee on Un-American Activities, in Report 1311 released March 29, 1944 (page 149), cited the International Juridical Association as "a Communist front and an offshoot of the International Labor Defense." The Report on the National Lawyers Guild (released by this Committee September 17, 1950, made House Report 3123, September 21, 1950, page 12) cited the International Juridical Association as an organization which "actively defended Communists, and consistently followed the Communist Party line."

A list of officers of the National Lawyers Guild, as of December 1949 (printed in the Committee's Report on the National Lawyers Guild, released September 17, 1950, page 18) contains the name of Thurgood Marshall, New York City, among the members of the Executive Board. He was shown to be an Associate Editor of the "Lawyers Guild Review" in the issue of May–June 1948 (page 422). It was reported in the "Daily Worker" of November 30, 1942 (page 1), that Mr. Marshall, Special Council to the National Association for the Advancement of Colored People, was one of those who submitted a report denouncing lynching and discrimination, which was adopted by the National Executive Board of the National Lawyers Guild. It was also reported in the Washington "Evening Star" (February 8, 1958, page A–22 and February 12, 1948, page A–8), that Mr. Marshall, identified as Special Counsel, NAACP, criticized the loyalty program in a public forum held under the auspices of the National Lawyers Guild in Washington, D.C.

The National Lawyers Guild was cited by the Special Committee on Un-American Activities as a Communist front in the Report of March 29, 1944 (page 149). In the Committee's Report on the organization, released in 1950, the Guild was cited as a Communist front which "is the foremost legal bulwark of the Communist Party, its front organizations, and controlled unions" and which "since its inception has never failed to rally to the legal defense of the Communist party and individual members thereof, including known espionage agents."

The "Daily Worker" of November 24, 1947 (page 4) reported that Thurgood Marshall was among a group of attorneys who sent a telegram to New York Congressmen asking them to oppose the contempt citations in the case of the Hollywood writers.

American League Against War and Fascism

1. Cited as subversive and Communist. (Attorney General Tom Clark, letters to Loyalty Review Board, released December 4, 1947, and September 21, 1948.)

2. A "Communist-front organization." (Attorney General Francis Biddle, opinion in re deportation order against Harry Bridges, May 28, 1942, p. 10.)

3. "Established in the United States in an effort to create public sentiment on behalf of a foreign policy adapted to the interests of the Soviet Union." (Attorney General Francis Biddle, Congressional Record, September 24, 1942, p. 7683.)

4. "The American League Against War and Fascism was organized at the First United States Congress Against War which was held in New York City, September 29 to October 1, 1933. Four years later at Pittsburgh, November 26–28, 1937, the name of the organization was changed to the American League for Peace and Democracy. * * * It remained as completely under the control of Communists when the name was changed as it had been before." (Special Committee on Un-American Activities, House Report 1311 on the CIO Political Action Committee, March 29, 1944, p. 53; also cited in Annual Reports, House Report 2, January 3, 1939, pp. 69 and 121; House Report 1476, January 3, 1940, p. 10; House Report 2277, June 25, 1942, p. 14.)

5. "Communist fronts change in accordance with the current party line. Thus when the party line was stridently anti-United States in the early 1930's, the Communists launched the American League Against War and Fascism." (Internal Security Subcommittee of the Senate Judiciary Committee, Handbook for Americans, S. Doc. 117, April 23, 1956, p. 92.)

(Source: Guide to Subversive Organizations, Pages 22 and 23.)

HOUSE COMMITTEE ON UN-AMERICAN ACTIVITIES, COMMUNIST ACTIVITIES IN THE BALTIMORE AREA, PART 3, MARCH 25 AND 26, 1954

(Whereupon, at 3:50 p.m., the hearing was reconvened, Representative Clyde Doyle having left the hearing room during the recess.)

Mr. JACKSON. The committee will be in order.

Are you ready to proceed, Mr. Counsel?

Mr. TAVENNER. Yes, sir.

Mr. JACKSON. Call your next witness, please.

Mr. TAVENNER. Rev. Joseph Nowak, will you come forward, please, sir?

Mr. JACKSON. Will you raise your right hand, sir? Do you solemnly swear in the testimony you are about to give before this subcommittee to tell the truth, the whole truth and nothing but the truth, so help you God?

Mr. NOWAK. I do.

Mr. JACKSON. Proceed, Mr. Counsel.

Mr. TAVENNER. Very well.

TESTIMONY OF JOSEPH S. NOWAK

Mr. TAVENNER. You are Rev. Joseph S. Nowak?

Mr. NOWAK. That is right, sir.

Mr. TAVENNER. Will you spell your last name, please?

Mr. NOWAK. N-o-w-a-k.

Mr. TAVENNER. I notice you are not accompanied by counsel.

Mr. NOWAK. No, sir.

Mr. TAVENNER. Do you desire counsel?

Mr. NOWAK. If you do not mind, I came here to tell truth and nothing but the truth, so I hope with that kind of evidence I need no lawyer.

Mr. TAVENNER. Very well, sir.

When and where were you born, Reverend Nowak?

Mr. NOWAK. I was born in Lwow, Poland. It was Austria then, on October 17, 1903.

Mr. TAVENNER. Will you spell the names of the places, please?

Mr. NOWAK. L-w-o-w, Lwow, Poland. It used to be Poland. It is not Poland any more.

Mr. TAVENNER. What is it now?

Mr. NOWAK. Soviet Union.

Mr. TAVENNER. When did you come to this country, Reverend Nowak?

Mr. NOWAK. My parents, or rather, my father came first, and then my mother followed when he got his job. My mother brought me over in June of 1906.

Mr. TAVENNER. Are you a naturalized American citizen?

Mr. NOWAK. Through my father's citizenship papers I am, sir.

Mr. TAVENNER. What is your occupation, please?

Mr. NOWAK. Well, social worker and minister.

Mr. TAVENNER. Will you tell the committee, please, what your formal educational training has been?

Mr. NOWAK. I think so. Baltimore City College, which used to be high school in Baltimore City, graduate 1921. Then I went to work and did not go back to college until 1928, Johns Hopkins University, bachelor of arts in 1932. Then in 1935 bachelor of divinity at the Union Theological Seminary, New York City.

Mr. TAVENNER. Will you tell the committee, please, what assignments you have had since the completion of your educational training?

Mr. NOWAK. Yes. In general from 1934, that is, the year before my graduation, till 1942 I was in charge of a small mission, St. Paul's Presbyterian Church in the city of Baltimore, Md. By the end of 1942 the mission was dissolved, and then I held a pastorate in Chicago in 1943–44, minister of Portage Park Presbyterian Church in Chicago. Then from 1944, after a very short stay of several weeks, practically at the Association House, Presbyterian Settlement House in Chicago, I became adult education director of the University of Chicago settlement.

From 1944 until 1950 I received another appointment from the Presbyterian Church to the Mountaineer Mining Mission around Morgantown, W. Va., from where in 1951 I was called to Detroit to Dodge Community House, where I resigned as of January 1, 1953.

Since then I had occasional jobs, the last one being at the YMCA, Downtown YMCA, in Detroit—where I am or have been, I do not know yet—desk clerk at the Downtown Y in Detroit.

Mr. JACKSON. Just a moment, Mr. Counsel. Would you explain? You say you have been; you do not know whether you are any longer. What is the situation?

Mr. NOWAK. I do not know how to put it, because 24 hours ago I was sure I had it, but now, if there is an appropriate time for it, I will probably try to explain. In other words, I have caused quite a bit of publicity to the YMCA, and therefore, while I have not been officially laid off, I was made to understand that the situation is very unpleasant, and it is up to me to make a decision, but the final decision still rests in the hands of the metropolitan secretary, who can fire if he wants to.

Mr. WALTER. Up to you to make a decision; is that what you said?

Mr. NOWAK. Yes.

(Representative Bernard W. Kearney left the hearing room at this point.)

Mr. WALTER. Was the innuendo that if you did not refuse to testify, you were going to lose your job?

Mr. NOWAK. It was not put that way.

Mr. WALTER. Nobody had better ever do that to a witness in this committee. or they will find themselves in more trouble than they can imagine can happen to any one person.

Mr. NOWAK. Mr. Congressman, if you do not mind if I say this one thing, please, I am not implying that they made any innuendoes, but they figured I got them into unfavorable publicity and therefore, well, they did not want to have any more unfavorable publicity. I can see their argument pretty clearly, but that is the situation, sir.

Mr. WALTER. No attempt was made to influence you not to testify?

Mr. NOWAK. Oh, no; I would not say that.

Mr. WALTER. All right.

Mr. JACKSON. Very well. Proceed, Mr. Counsel.

Mr. TAVENNER. I think it is only fair to the witness that everyone reserve their opinion about you until they have heard your testimony.

Mr. NOWAK. Well, it is bad publicity anyway.

Mr. TAVENNER. Isn't that fair?

Mr. NOWAK. That is what I would feel.

Mr. JACKSON. Proceed, Mr. Counsel.

Mr. TAVENNER. Reverend Nowak, you appeared as a witness before an executive session of the committee on the 22d day of December 1953.

Mr. NOWAK. Yes, sir.

Mr. TAVENNER. At which time, in answer to a question as to whether you had ever been a member of the Communist Party, you replied that you had not.

Mr. NOWAK. That is right.

Mr. TAVENNER. Is it true that at a subsequent time you voluntarily advised an investigator of this committee that your denial of Communist Party membership was not truthful?

Mr. NOWAK. That is true, sir.

Mr. TAVENNER. And that your conscience compelled you to correct your testimony?

Mr. NOWAK. That is true, sir.

Mr. TAVENNER. Was any promise made, either directly or indirectly, by the investigator, any member of the staff of the Committee on Un-American Activities, or any member of the committee—that is, directly or indirectly, either in the nature of affording immunity or offering any reward or promise of any character in the event you would correct your testimony?

Mr. NOWAK. None whatsoever, sir.

Mr. TAVENNER. I would like to give you the opportunity, if you desire to take advantage of it, to make any statement you desire regarding the reasons for your desire to change your testimony in that respect.

Mr. NOWAK. Well, of course the main reason was probably this, that after I have given false testimony on 22d of December, I knew that it was not true, and I felt bad and was afraid, but the second more important thing is this, Mr. Tavenner: For 8 years I have been trying to dodge the fact that I did belong to the party, and I thought I buried the whole memory of it, and I knew I had been one, and that blamed thing just haunted me all the time. That probably may explain even some of my actions in the last 8 years because, though I was pretty sure nobody knew, at the same time I knew that I was one, and finally it got to the point where I could not live with myself. I had to tell or else be a fool or a crazy nut or something like that, so I did tell, and it relieved me quite a bit, sir.

Now, would that sound intelligible?

Mr. TAVENNER. Yes, sir; I think that is easy to understand.

(Representative Clyde Doyle returned to the hearing room at this point.)

Mr. TAVENNER. It is easy to understand that you would want to correct a misstatement. You say you have been a member of the Communist Party?

Mr. NOWAK. That is right.

Mr. TAVENNER. Where and when did you become a member?

Mr. NOWAK. Well, I became a member in Chicago in 1946 in the month of May, and I sneaked out of it, let us put it that way, some time early in the fall.

Mr. TAVENNER. Of the same year?

Mr. NOWAK. Of the same year.

Mr. TAVENNER. Have you had any connection with the Communist Party since that time?

Mr. NOWAK. As a party organization; no. I have seen the individuals because I was involved in the union organizing, and I have seen some of these people.

Mr. TAVENNER. But you have taken no part in any Communist Party activity since the fall of the same year in which you joined the Communist Party?

Mr. NOWAK. No, sir.

Mr. TAVENNER. I will ask you a little later about the circumstances under which you left the Communist Party.

Mr. NOWAK. All right, sir.

Mr. TAVENNER. Were you a member of the Communist Party while you were on your assignment in Baltimore?

Mr. NOWAK. No, sir; I was not.

Mr. TAVENNER. Although you were not a member of the Communist Party while you were in Baltimore, did you collaborate with functionaries of the Communist Party while you were there——

Mr. NOWAK. I worked together——

Mr. TAVENNER. And worked with the Communist Party?

Mr. NOWAK. I worked together with them; yes.

Mr. WALTER. Knowingly?

Mr. NOWAK. As an official of the American League [Against War and Fascism]; yes, and also knowingly. I knew that they were officials in the party.

Mr. TAVENNER. Did you continue in that relationship with officials of the Communist Party during the entire period after your graduation from the Union Theological Seminary until you left Baltimore in 1942?

Mr. NOWAK. I would say I was actively—I worked with them as long as American League Against War and Fascism existed. When the whole thing disintegrated, well, there was nothing else to be done for the American League, and there was no collaboration.

Mr. TAVENNER. Did you work with the Communist Party in any way prior to your coming to Baltimore in 1935?

* * * * * * *

Mr. NOWAK. Well, I know that discussion was carried mostly through the executive secretary of the American League.

Mr. TAVENNER. That is Mr. Swerdloff?

Mr. NOWAK. That is right. I know that I was active in it. I know that, for example, I went, and I got a speaker Mr. Thurgood Marshall, who was at that time legal representative of the National Association for the Advancement of Colored People. Why I was picked out, probably because I have known him, and he would have said yes to me. He might not have said yes to others. He was the main speaker.

Mr. TAVENNER. Just a moment. Are you doubtful whether he would have accepted from the head of the Communist Party in Baltimore?

Mr. NOWAK. I think he would have had sense enough to say no.

Mr. TAVENNER. He did not know, in fact, of the Communist connection with this demonstration, did he?

Mr. NOWAK. I cannot tell other people's minds.

Mr. TAVENNER. But as far as you know, did he know?

Mr. NOWAK. That is again hard to tell because American League was being criticized more and more later as being controlled by the Communists, whether he felt that way in 1936 I could not tell you.

Mr. TAVENNER. At any rate, you were active in that demonstration?

Mr. NOWAK. That is right.

Mr. TAVENNER. What part did you play in the actual demonstration?

Mr. NOWAK. I was on the sound truck and opened the meeting with an invocation.

Mr. TAVENNER. Reverend Hutchison—did Reverend Hutchison take any part in the demonstration?

Mr. NOWAK. I know he was on the platform. I cannot remember now whether he made a speech or rather read a set of resolutions to be adopted by the meeting.

Mr. TAVENNER. Who prepared the resolution?

Mr. NOWAK. At a meeting of the committee where Sam Swerdloff and others were present, and we prepared them.

Mr. TAVENNER. Is there anything else that you can recall about the presence of Reverend Hutchison at that demonstration?

Mr. NOWAK. Well, I know this much, that Reverend Hutchison and I left the demonstration in the same car. Jack took me home and dropped me off at my home after the demonstration.

Mr. TAVENNER. You seem to express concern about the part that you played in that demonstration by giving the invocation.

Mr. NOWAK. Well, frankly I felt like a fool, even when I agreed at the meeting prior to the demonstration, at a meeting of the committee, to take that part, because after all was said and done, I felt it was not appropriate to have a meeting of that kind started with a prayer, but I went along with the whole business. When I got through with it, I spoke to Earl and to others that I felt like a damned fool, and I know that I felt that way, that it was a foolish thing for me to do, not so much being active to it as rather sticking prayer right into that kind of a meeting.

Mr. TAVENNER. Were there any arrests made at that demonstration?

Mr. LIPSCOMB. One final question along this line, Judge Marshall.

The Daily Worker of May 24, 1947, reported that Thurgood Marshall was among a group who sent a telegram to New York Congressmen asking them to oppose citations in the case of the Hollywood writers.

Do you have any recollection of that telegram?

Mr. MARSHALL. No, sir; the only thing I can remember is that there was considerable discussion. The only reason I did not sign it is because I did not join in any group in signing telegrams, usually. I have no independent recollection.

Mr. LIPSCOMB. You would not say you did or did not sign it?

Mr. MARSHALL. I would be reasonably certain I did not.

Mr. LIPSCOMB. Judge Marshall, a long time previous to the beginning of the sit-in and freedom riders' demonstrations in southern States, you made a speech on or about February 2, 1956, in Memphis, Tenn., wherein you said in part:

> We have got the other side licked. It is just a matter of time. The period of peace and prosperity is past. Whichever State continues to defy the law will have to answer in court. We will finish the fight we started in 1953 and not for one moment will we deviate from our tactics and our goal. The NAACP does not need lawsuits any more, because we have got the law, religion, and God on our side and the other side is putting all its faith and hopes in the Devil.

Does your opinion today conform with these words that you spoke in Memphis?

Mr. MARSHALL. In the first place, those are words obviously quoted from the newspaper. They were not my words.

Mr. LIPSCOMB. Do you deny that you said this?

Mr. MARSHALL. I know definitely that I said on repeated occasions that we should not deviate from our present tactics. What I meant by that was we should keep them lawful, respectable, and in keeping with good decency.

Mr. LIPSCOMB. I refer you particularly to this quote:

The NAACP does not need lawsuits any more because we have got the law, religion, and God on our side and the other side is putting all its faith and hopes in the Devil.

Mr. MARSHALL. I did not say that. I know what I said and have said repeatedly. I have said that many cases have established the law. There I was talking about the decision in the *Brown* case. I said the law is clear. We do not need a whole lot of lawsuits to reestablish the law. What we need is to get conformity to the law.

Mr. LIPSCOMB. Mr. Chairman, I would like to point out that the first paper that I was reading from there that gave that particular quote was in an article Paul Molloy wrote, which appeared in the Commercial Appeal, Memphis, Friday morning, February 3, 1956.

Another newspaper in that same city contains a story on this same meeting reported by Clark Porteous, of the Press-Scimitar staff. That is the staff of the Memphis Press-Scimitar, Memphis, Tenn. I will read the way these remarks were reported by Mr. Porteous, Judge:

Anybody who reads any books—Old or New Testament, Koran—every faith in the world is based on the fatherhood of God and the brotherhood of man. For the life of us, we can't see what the other side has to go on. We have law, religion, and God on our side. They'll get tired of putting all faith and hope on the Devil. He never stayed with anybody. He is the one they have to rely on.

Is that a correct quote?

Mr. MARSHALL. I would suspect it is.

Mr. LIPSCOMB. Do you still feel today that you have God, the law, and religion on your side and everyone who opposes the positions you take is allying with the Devil?

Mr. MARSHALL. I do not. I do not think we understand what we mean by the other side. "The other side"—I mean groups like the Ku Klux Klan and the groups that defy law, God, and everybody else. That was the other side I was talking about. I am not talking about people who disagree with reason. I am not talking about people who disagree lawfully. I am not talking about people who in their own mind disagree. I am for people who disagree and have their own minds and I would not for one moment seek to aline them with the Devil. But anybody who takes a man out and lynches him, I believe is working with the Devil.

Mr. LIPSCOMB. Let me continue with your Memphis speech, Judge.

Fools that they are, they think that they can split us. We will meet them in every back alley, and when we bring them down the main road, the umpire (Supreme Court) will say "You're still out." We have been peaceful recently, waiting for the other side to show its cards. They brought out all their top cards, and we know we can handle them. No we are ready to go. But there is room for only one in the driver's seat, and that is the NAACP.

Did you say that?

Mr. MARSHALL. The last part?

Mr. LIPSCOMB. The whole quote.

Mr. MARSHALL. No, sir. I never talked about meeting anybody in an alley.

I might point out that these newspapers that you have cited so far all have contained the most violent editorials condemning the school cases and everything around them, and certainly I would not expect them to report accurately what I said in any meeting.

Mr. LIPSCOMB. You think they just dreamed that up out of their imagination?

Mr. MARSHALL. I would say editorialized.

Mr. LIPSCOMB. Mr. Chairman, the text of these two newspaper reports speak for themselves. I would like to have them both offered in the record at this particular point.

Senator JOHNSTON. They will both become a part of the record.

Mr. LIPSCOMB. One is No. 29, the other is exhibit 29-A.

(The document marked "exhibit 29" is as follows:)

EXHIBIT No. 29

[The Commercial Appeal, Memphis, Feb. 3, 1956]

ATTORNEY FOR NAACP SEES NEGRO VICTORY

THURGOOD MARSHALL DECLARES IT'S A MATTER OF TIME—SPEAKS TO 2,000 HERE

(By Paul Molloy)

"We've got the other side licked. It's just a matter of time."

With these words, Thurgood Marshall, Negro special counsel for the National Association for Advancement of Colored People, yesterday summed up a long report of his group's activities.

Marshall, a Baltimore-born constitutional lawyer, led the Negroes' fight before the Supreme Court which brought the ruling to end segregation in the schools.

OVERFLOW CROWD

He spoke to an overflow crowd at Metropolitan Baptist Church. Many of the 2,000 present stood in the aisles and sat in the stairways.

"The period of peace and quiet has passed," he told his cheering audience. "Whichever State continues to defy the law will have to answer in court. We will finish the fight we started in 1953, and not for one moment will we deviate from our tactics and our goal."

Marshall then described the goal: "We're driving for the elimination of every form of segregation in every form of life in every part of this country."

The meeting, sponsored by the Memphis NAACP chapter, heard Marshall angrily deny claims his organization is Communist tainted.

"This church, the Catholic Church, the Methodist Church, wouldn't let us through their doors if we were subversive," he said.

"Edgar Hoover, boss of the FBI, says we're not subversive," Marshall said. "Our conventions have been addressed by Harry Truman and President Eisenhower and (Vice President Richard) Nixon."

RESPECT OF PRESIDENTS

The NAACP, he said, has enjoyed the respect of "every President of the United States since it was organized in 1909."

Opponents are spreading the story the NAACP doesn't represent the Negroes, Marshall said.

"We don't represent them all but we represent a darn sight more of them than the daily press does.

"They say the Negro doesn't want integration. 'I've got news for them: The Negroes in the NAACP are for it, the Negro Masons are for it, the Catholic Negroes are for it, the Methodist Negroes are for it, the Baptist Negroes are for it. If that many are for it—who's left?"

Opponents also contend the Negro is "not ready" for integration, Marshall said.

"The Negro has been ready for it ever since the first one laid down his life for his country. If we can integrate our blood on the battlefield, we can integrate our children in the schools."

"THE WHEN AND HOW"

As to "the when and how" of desegregation, Marshall said, "the sooner we get it over with, the better.

"If we can desegregate school children in Hoxie, Ark., we can desegregate them in Tennessee."

The NAACP "doesn't need lawsuits any more," the attorney said, "because we've got the law, religion, and God on our side * * * and the other side is putting all its faith and hopes in the devil. * * * Fools that they are, to think they can split us. * * * We'll meet them in every back alley and when we bring them down the main road the umpire (Supreme Court) will say: 'You're still out.'"

Discussing Mississippi, Marshall said opposing forces there had tried "everything," including murder and economic pressure, "but NAACP membership in Mississippi is larger than it's ever been before."

He said two bills in the Mississippi Legislature were aimed at throwing both the NAACP and the FBI out of the State.

"They have as much chance of throwing us out as they have of throwing out the FBI," he said.

$300,000 MISSISSIPPI FUND

"They tell you Negroes can't go to Ole Miss," Marshall said. "What's so particular about Mississippi? It's just a State in the Union and as long as it stays in the Union, it'll have to play by the rules. We've set up a fund there of close to $300,000.

"We filed desegregation suits at the elementary school level because under Jim Crow standards in the South, including Tennessee, the Negro was getting such a lousy setup we had to clean it all the way up, from top to bottom.

"We've been peaceful recently, waiting for the other side to show its cards. They brought out all their top cards and we know we can handle them. Now we're ready to go. But there is room for only one in the driver's seat, and that's the NAACP."

Marshall was introduced by Dr. Hollis Price, president of LeMoyne College.

(The document marked "Exhibit 29–A" is as follows:)

EXHIBIT No. 29–A

"TAKE RACE OUT OF THE LAW" URGES ATTORNEY FOR NAACP

(By Clark Porteous)

Main goal of the National Association for the Advancement of Colored People is "to take every law off the books which prohibits any rights because of race or color," Thurgood Marshall, Negro, special counsel for NAACP, said.

Marshall, the Baltimore-born lawyer who won the Supreme Court school segregation suit, spoke to an overflow crowd of more than 2,000 at Metropolitan Baptist Church last night, the opening meeting of the Memphis Branch of NAACP membership campaign.

Despite the rainy night, the crowd was so large many had to sit in the educational building back of the church auditorium, where they could hear through a sound system, but could not see. There was standing room only in the church. The audience included many Negro leaders, a number of Mississippi Negroes, and a few white persons.

Marshall said after every law is eliminated which prohibits rights because of race and color, "we are then going to get another law passed, to include anything we might have missed in the other laws."

"ONLY LAWFUL MEANS

"We will use only lawful means prescribed by our Government," Marshall said. "We ask for support of all Americans who believe in what we believe, excluding only Communists and members of Ku Klux Klan. Any man, regardless of color, is welcome. There is room on the bandwagon for everybody to get on, but remember, there is room for only one in the driver's seat. That is going to be the NAACP.

"We will meet February 18 in Atlanta—Talmadge's front yard. It will be a conference of presidents of 17 Southern State NAACP organizations. We will decide the legal programs. If we need more lawyers, we will get them. If we need more money, we will get it.

"The period of peace and quiet, so far as lawsuits are concerned, is past. Whatever States continue to defy the Supreme Court will have to answer in court.

"States willing to move, we'll work with you. States that won't move, we'll

take them to see the man. (court). We'll not be provoked by white citizens' councils to name calling or recriminations. We'll not be provoked to violence. Violence never settled anything. We are religious folks. We don't believe in violence.

"AS WE PREACH

"The difference between us and some others, we practice what we preach. The white citizens' councils say do unto others, as you would have them do unto you, but do it to them first.

"They say the NAACP doesn't represent all Negroes, and we don't.

"We have the NAACP members, the Negro Masons, the Negro Catholics, the Negro Methodists—all three groups, the Negro Baptists—all 18 groups. If that many Negroes in each State are for desegregation, who's left?

"How can anybody with a straight face say Negroes don't want integration? How can they say a human, intelligent being wants somebody else's foot on his neck? (loud cries of 'amen' here).

"They say we are not ready for integration. I say we have been ready since the first Negro laid down his life to defend this country. Negroes were ready to spill as much red blood as anybody. If the Negro could integrate blood on the battlefield, he can integrate.

"$64,000 QUESTION

"They say the Negro is not educationally qualified, that he doesn't come up to standards. Little Gloria Lockerman, from Baltimore, did all right on "the $64,000 Question" program. Was she white? She was a product of a Jim Crow school. God knows what she would have done if she had been in an integrated school.

"The record shows the average Jim Crow schools are below the white schools. Yet school board members say they are sorry, but they can't admit colored kids because they are below standards. It's like a friend of mine in Texas, who killed his mother and father, then asked for mercy because he was an orphan. They hanged him. I don't know what they'll do about the school boards.

"I say test the children fair and square. Then put the smart colored kids with the smart white kids, and the dumb with the dumb. We want no special favors.

"They say Negroes have a high disease rate. Records show maybe this is true. Negroes can't get the health service, they don't have the money. Well, let's give tests, and put the healthy Negroes with the healthy whites and the unhealthy with the unhealthy. Just don't use race as the base.

"Negroes should be able to go to any hotel in this city, if they have the money. When a man like Ralph Bunche can't go to certain hotels, it doesn't make sense. Why do we have to be excluded from everything good? Could it be because of color? Certainly not. Walter White (the late executive secretary of NAACP, a Negro) was blond and blue-eyed.

"It couldn't be because of dark color, or we wouldn't have all this sun tanning. It couldn't be because our hair usually isn't straight—or what of the hair waving lotion business? It couldn't be previous condition of servitude. There are no people in this country who did not have slavery in their background if you go back far enough.

"WHIPPING BOY

"There is only one reason—somebody has to be a whipping boy. The politicians need Negroes for a whipping boy. They can't point to a single reason why Ralph Bunche's children can't go to school with white children. They are healthy. They are intellectual, and their Pappy is the biggest man in the world today in foreign affairs.

"If they could desegregate in Hoxie, Ark., they could in Tennessee. All we need is a little will power to do it. We have been peaceful since May 31. We were waiting for the other side to show their hole cards. They have. We are prepared. Now we've ready to go. We have the law pretty clear. We don't really need lawsuits any more to establish the law. We have the law on our side.

"Anybody who reads any book—Old or New Testament, Koran—every faith in the world is based on the Fatherhood of God and the Brotherhood of Man. For the life of us, we can't see what the other side has to go on. We have law, religion, and God on our side. They'll get tired of putting all faith and hope on

the devil. He never stayed with anybody. He's the only one they have to rely on.

"We have got the other side licked. The only way they can be sucessful is to split us down the middle. They are going to try it. They will say our leaders are bad, that we don't have any money. They are trying to pass laws to fine us $5 for a $2 subscription. They are suing us for libel and slander. Fools that they are, they think they can divide us or get all our money.

"WE'LL MEET THEM

"We are going to meet them in every back alley and crossroad. We are going to carry them to Main Street. There is no doubt when it is all over, the umpire (Supreme Court) will say 'you're still out.' "

Marshall had demonstrated the situation by telling how Martin slid home in the World Series, and was tagged out by Campanella, and the umpire said "Out." He said Martin danced around and protested, but was still out. He said the Supreme Court called the southern officials fighting integration out, but they are dancing around and protesting, but are "still out."

Mr. LIPSCOMB. Judge, in April of 1960, you made a speech in Nashville, Tenn., and the Nashville Banner of April 7 says in part:

The chief legal counsel for the NAACP came here Wednesday, giving assurance that the whole force of the NAACP stands behind students in the sit-in demonstrations.

As an organization, was the NAACP and NAACP Legal Defense and Education Fund behind the agitation of these demonstrations?

Mr. MARSHALL. The best answer I can give to that, Mr. Lipscomb, is when the first sit-ins broke, I was in London and had been in London for 2 months.

Mr. LIPSCOMB. I am not speaking now, Judge, of representing those who were charged with the violation of the law. I am speaking now of fomenting within the organization, the NAACP, students and others to participate in the sit-in demonstration.

Mr. MARSHALL. I thought I made it clear that I could not have fomented from London. Prior to that time, I was in Africa, in Kenya. I certainly could not have done it.

Mr. LIPSCOMB. This speech was made in April 1960.

Mr. MARSHALL. That was after the sit-ins had been in movement. This was a group of students at Fisk University who wanted me to come down because they were not too sure where they were going and what was going on and had first gone out, as students do, without looking at the consequences. Then they had all been arrested; they were in jail.

I might say parenthetically that at the meeting with the students, I urged them not to lose their schooling but to come out and finish schooling. If they came out and finished school, we would give them whatever legal help they asked us for. But I think that did more to help Nashville than to hurt it, because it all broke down shortly thereafter.

Mr. LIPSCOMB. I am not speaking of Nashville as such right now, but I will refer you back to your Memphis speech, where you stated:

Not for one moment will we deviate from our tactics and goals.

As I recall, that was one of the statements that you recall having made in Memphis, was it not?

Mr. MARSHALL. The tactics and goals I was speaking about was the tactics—the goal of the NAACP to get complete equality under the law, the tactics being law-abiding, peaceful tactics, as contrasted to

Communist and other organizations and the ruffian-type business. I was urging the Negroes to try to keep their fight what we considered to be righteous and not to go off base.

Mr. LIPSCOMB. Prior to this speech that you made in April of 1960 in Nashville, the March 20, 1960, issue of the New York Times reports in part:

Lawyers of the National Association for the Advancement of Colored People drafted a master plan today for defending Negroes arrested for lunch-counter demonstrations in the South. Thurgood Marshall, counsel for the NAACP, announced that the arrests would be challenged as violations of the 14th amendment to the Constitution.

"We are going to repeal every fine," Mr. Marshall announced. The strategy was charted at a meeting of 62 lawyers, who will defend more than 1,000 Negroes serving trial for any Negro demonstration, mainly sit-in tactics at lunch counters.

Do you recall that particular conference here in Washington?

Mr. MARSHALL. I do.

Mr. LIPSCOMB. Do you remember whether or not two NAACP attorneys from Texas, Walter J. Durham and/or C. B. Bunkley, attended?

Mr. MARSHALL. W. J. Durham.

Mr. LIPSCOMB. And C. B. Bunkley, both of whom I believe were associated with you in the *Texas NAACP* case. Did they attend the Washington meeting?

Mr. MARSHALL. As I remember it, Bunkley was here. I am not too sure about Durham. One of the two were here, or maybe both.

Mr. LIPSCOMB. Whether they were here or not, you will admit that they were with you in spirit insofar as that meeting is concerned?

Mr. MARSHALL. As a matter of fact, they represented the students at Marshall, Tex.

Mr. LIPSCOMB. The 1961 report of the general investigative committee——

Mr. MARSHALL. If you are going to get off, may I make one statement?

Mr. LIPSCOMB. Surely. I am going into the——

Mr. MARSHALL. What I wanted to get straight was this was a collection of lawyers that were representing clients in cases that had already been filed and that were in the process of being tried.

Mr. LIPSCOMB. The 1961 report of the general investigative committee to the House of Representatives of the 57th Legislature of Texas, in volume 3, at page 24, reads as follows:

NAACP Regional Attorney Walter J. Durham and NAACP Attorney C. B. Bunkley, together with Romeo Williams, sometime law partner of Bunkley and a leader in organizing the demonstrations, came to the office of President Cole at Wiley College on the morning of March 21 with $35,000 in currency in a briefcase. The brought the money to be stored in a school treasury until needed for finance and bail for the students who were to be arrested in the planned sit-ins on March 26.

Senator JOHNSTON. We are going to have to go and vote in a minute. I think what I am going to have to do, I am going to have to leave here, anyway, at 12. We will meet Monday morning at 10:30.

Senator KEATING. Mr. Chairman, will there be any objection to getting a unanimous-consent request that the committee meet during the session of the Senate on Monday?

Senator JOHNSTON. I cannot speak for the whole Senate on that question, as you know. I have not made any objection at any time, have I?

Senator KEATING. Well, whatever has gone on in the past, may I inquire if you are able to say whether you would have any objection now to their meeting?

Senator JOHNSTON. I am not making any objection. That is the only thing I can say. I think that is as far as I can go and as far as you could go.

Senator KEATING. I would not speak for anybody but myself.

Senator HART. It sounds encouraging.

Senator JOHNSTON. We were hoping that we might get through today, but you know what we have gone through. We had had about half the time running back and forth to the Senate. I have to catch a plane, leaving here at 1 o'clock, so I do not see anything but to get ready to go. We will recess until 10:30 Monday morning.

(Whereupon, at 11:55 a.m., the subcommittee recessed, to reconvene 10:30 a.m., Monday, August 23, 1962.)

NOMINATION OF THURGOOD MARSHALL

MONDAY, AUGUST 20, 1962

U.S. SENATE,
SUBCOMMITTEE ON NOMINATIONS OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee (composed of Senators Johnston, McClellan, and Hruska), met, pursuant to call, at 10:35 a.m., in room 2228, New Senate Office Building, Senator Olin D. Johnston presiding.

Present: Senator Johnston.

Also present: Senators Hart and Keating.

L. P. B. Lipscomb, Esq., member of the professional staff, Committee on the Judiciary.

Senator JOHNSTON. The committee will come to order.

We will resume the hearings where we left off.

Mr. LIPSCOMB. Judge Marshall, at the conclusion of the hearings last Friday I had just begun to read from the 1961 report of the general investigating committee to the House of Representatives of the 57th Legislature of Texas and in this report, in volume 3 at page 24 appears the following:

> NAACP Regional Attorney Walter J. Durham, and NAACP Attorney C. B. Bunkley, together with Romeo Williams, sometime law partner of Bunkley, and a leader in organizing the demonstrations, came to the office of President Cole at Wiley College on the morning of March 21, with $35,000 in currency in a briefcase. They brought the money to be stored in the school treasury until needed for fines and bail for the students who were to be arrested in the planned sit-ins on March 26. President Cole was reluctant to be involved in the transaction and he gave the money, in the presence of Durham, Bunkley, and Williams, to Wiley Business Manager Frasier. Durham stated that a receipt had to be returned to NAACP headquarters in Philadelphia, because it came from "brotherhood headquarters" there, and Frasier gave him a receipt for the $35,000 deposited at Wiley. The attorneys explained that there would be no jail sentences, nothing more than a fine which was to be paid out of the money on hand. President Cole said he would go along if they were sure the students would not receive jail sentences and they assured him that there would be no jail sentences. They also assured him that it was planned that the fines would not be paid until they knew they had lost the decision in Harrison County and the "higher court" had had an opportunity to pass on it.

First, Judge, with reference to this $35,000 in currency, can you tell us what the brotherhood headquarters in Philadelphia is of the NAACP?

88547—62——9

STATEMENT OF THURGOOD MARSHALL, NOMINEE TO BE U.S. CIRCUIT JUDGE FOR THE SECOND CIRCUIT—Resumed

Mr. MARSHALL. I have never heard of the NAACP having any office in Philadelphia other than the Philadelphia branch of the NAACP. The national office of the NAACP is 20 West 40th Street, New York City.

Mr. LIPSCOMB. Would this $35,000 referred to here come from the NAACP Legal and Educational Fund, Inc., treasury or would that come from some other——

Mr. MARSHALL. I can guarantee you it did not come from the NAACP Legal Defense and Educational Fund.

Mr. LIPSCOMB. The report also indicates there was additional $35,000 in currency that went to Bishop College making a total of $70,000 that was taken to Texas.

Did you personally have any knowledge of this money?

Mr. MARSHALL. I didn't have any knowledge of anything you have said there until you read it the other day. All I know is that there were cases in Marshall, Tex., that is all I know.

Mr. LIPSCOMB. I do believe you said Friday that you knew that Bunkley was defending?

Mr. MARSHALL. That is what I said, I knew there were cases in Marshall, Tex., and I know they were appealed and they were reversed, that is all I know, the legal side.

Mr. LIPSCOMB. But your associates Durham and Bunkley as lawyers were participating in a scheme where they were anticipating defending alleged defendants before any act for which the individual could be charged had been committed, were they not?

Mr. MARSHALL. They were not my associates.

Mr. LIPSCOMB. They were both associated with you in the trial of the Texas case, were they not?

Mr. MARSHALL. They were my associates in that case. But they were not my associates for all purposes.

Mr. LIPSCOMB. I believe you said that one of them also attended the conference that was held the days immediately preceding this particular date in Washington?

Mr. MARSHALL. I think C. B. Bunkley was there, and he was there on cases of people who had already been arrested.

Mr. LIPSCOMB. Well, then you say that this report as it appears in this investigating report of this Texas committee is wrong?

Mr. MARSHALL. I do not. I say I don't know whether it is right or wrong because I have no knowledge of it at all.

Mr. LIPSCOMB. But this report states on March 21 that they did come to the college and they did have this currency and this was before any of the demonstrations had taken place.

Mr. MARSHALL. I say I have no knowledge of it at all. I do have this knowledge, that as you brought out earlier that the NAACP was under an injunction and the injunction was still outstanding, and if anything had been done illegal, I would assume that some action would have been taken.

Mr. LIPSCOMB. Do you personally know a man by the name of Doxey Wilkerson?

Mr. MARSHALL. I knew Doxey Wilkerson when he was a professor at Howard University when I was at the Howard Law School and I knew him for several years thereafter.

Mr. LIPSCOMB. Do you know whether he was ever associated with the NAACP or the NAACP Legal Defense and Educational Fund, Inc.?

Mr. MARSHALL. I know of no association with the NAACP Legal Defense and Educational Fund. I think I remember that years ago he did attend some conventions of the NAACP and I might add that was before we know anything of his connections.

Mr. LIPSCOMB. Did the NAACP or the NAACP Legal Defense and Educational Fund ever utilize his services for any specific purposes to your knowledge?

Mr. MARSHALL. I believe that prior to 1940, sometime between 1936 and 1940, he made a study of some sort for the NAACP. What it is or was, I am not sure. He was a brilliant scholar.

Mr. LIPSCOMB. In September 1959 Doxey Wilkerson joined the faculty of Bishop College, Marshall, Tex., and he worked in active concert with the NAACP in planning sit-in demonstrations and training NAACP students in techniques.

A portion of the general investigating committee's report to the Texas House of Representatives reads as follows:

Although Doxey Wilkerson had been at Bishop College only since September 1959 he had made sufficient progress by the middle of the following December to preside at meetings held by the National Association for the Advancement of Colored People (NAACP) between December 18, 1959, and December 21 at Prairie View A. & M. College for the purpose of drawing up sit-in demonstrations by the students.

Representatives from over 20 colleges attended, including the following:

Wiley College, Bishop College, Hurd Beauty College, all from Marshall, Tex.;

Texas Southern University, Houston;

Huston-Tillotson College, Austin;

Paul Quinn College, Waco; Butler College, Tyler; Rusk College, Rusk; Southern University, Baton Rouge, La.; Dillard College and Grambling College, La.;

Zillia College, New Orleans; Mississippi Vocational College, Jackson, Miss.;

Tennessee Agricultural & Industrial College, Nashville; and Arkansas State College, Pine Bluff.

Representation ranged from 1 or 2 individuals per school to about 20 per school. Doxey Wilkerson was one of the 17 representatives from Bishop College and he was introduced by Dr. S. M. Nabrit, president of Texas Southern University. Dr. Edward B. Evans, president of Prairie View A. & M. College, agreed to allow the meeting to be held at Prairie View A. & M., but he attended only the opening ceremonies and then he left.

If he did not know the purpose of the meetings and what took place in the school which he headed he certainly should have informed himself as to such activities. Visiting students stayed in the dormitories at Prairie View A. & M. All of those present agreed to participate in the demonstrations except Prairie View A. & M. and Butler College.

Wilkerson made several talks to the students and he and Dr .C. O. Simpkins, a Shreveport Negro dentist and president of the United Christian Movement, Inc., presided over the various meetings.

Doxey Wilkerson started out by quoting a few lines of Russian poetry and then went on to impress upon the students the necessity of holding the sit-in demonstrations. Plans were drawn up to be given to each "leader" who in turn was to pass them on to his group. Each NAACP student chapter was assigned an amount of money to be appropriated for the campaign. Dr. Simpkins described plans for "passive resistance" and told the students that by going to these places and just sitting there they might not get served but they certainly would be eliminating the owner's business, as the white people could not be served as long as the Negroes occupied the seats. Several teachers

addressed the students about discrimination, racial pride, and the methods of passive or nonviolent resistance, including Robert E. Masingale, chemistry teacher at Bishop College and A. P. Watson, president of the NAACP at Wiley College.

Many students in Watson's classes were given the impression that they would not be passed if they were not members of the NAACP.

Later, Dr. Curry in defending Doxey Wilkerson as "an unfortunate victim of circumstances" was to state that the students "did not consult with any faculty member in planning their demonstration."

On January 10, 1960, Doxey Wilkerson held a meeting with the students of Wiley and Bishop Colleges and instructed them in the sit-in demonstrations. He swore all of them to secrecy and made all of those joining in the movement promise that they would not back out and would "defend until death" the "cause."

Fines were established for any who might attempt to withdraw. He drew up a document outlining the rules they should follow in their every movement. Under no circumstances were they to take any action on their own initiative but were to follow signals and directions from the "leader" assigned to each group.

Whenever possible he (Doxey Wilkerson) would arrange to be present but not directly with the students so that his guidance and signals could be observed by the students without attracting attention from others.

And throughout the demonstrations large or small, a definite pattern stands out—they have all been strictly disciplined and "controlled." Ordinary student "demonstrations" which are spontaneous or voluntary or which originate with the students are usually unruly affairs which quickly evolve into wild, disorderly, and highly individualistic behavior. But the sit-ins, in line with Communist policy, have been highly organized and completely disciplined. This illustrates the theory taught by Doxey Wilkerson in the Communist-run Jefferson School for Social Science, namely, that "the struggle for Negro rights did not happen accidentally, but is a party-led effort to unite them against U.S. imperialism."

Now, Judge Marshall, is this a correct characterization of strategy and tactics planned by the NAACP in regard to sit-in demonstrations?

Mr. MARSHALL. Well, I would like to make one or two statements clear.

You said that Doxey Wilkerson took over this affair in 1959.

Mr. LIPSCOMB. That is when he joined the faculty of this college in Texas.

Mr. MARSHALL. Well, I had no connection with the NAACP in 1959. I did not hold office in it. I was not on the board; I was not on the staff. I had no connection at all with NAACP. I know nothing of anything in that report. I had no responsibility for it and I certainly can't be held responsible for something I had nothing at all to do with.

Mr. LIPSCOMB. Well, is this the mirror of the plan you proposed to put the NAACP in the driver's seat, as revealed by your remarks in Memphis?

Mr. MARSHALL. I had no connection whatsoever with Mr. Doxey Wilkerson or anybody he represents whatsoever under any circumstances.

Mr. LIPSCOMB. I am speaking——

Mr. MARSHALL. Except to do this, except to be the spearhead when I was active in NAACP of getting through the strongest resolution that anybody has ever adopted against Communists, fellow travelers in their effort to infiltrate the NAACP which resolution was adopted

in Boston, Mass., and as long as I was connected with the NAACP, I made every effort and that is also substantiated by the latest book of the head of the Federal Bureau of Investigation.

Mr. LIPSCOMB. Does this story of this organization of sit-in demonstrations in Texas conform to your promise at Nashville that the whole force of the NAACP stands behind student sit-in demonstrations?

Mr. MARSHALL. We also, if the paper accurately reported it, made it clear that we stood behind anybody who was being, what we considered unjustly charged in violation of his constitutional rights, and would continue to aid them as we had always done.

The statement about being in the driver's seat was simply, if the rest of my talk had been reported, would have said that Communist agents and Communist organizations trying to take this struggle over and we have to be, maybe unfortunately "in the driver's seat" was the phrase I used, but I made it clear that that was to keep the Communists out and away from my people.

Mr. LIPSCOMB. You were referring to Communists in Memphis when you stated that?

Mr. MARSHALL. Yes, sir.

Mr. LIPSCOMB. When you stated in one place "in the driver's seat"?

Mr. MARSHALL. Yes, sir.

Mr. LIPSCOMB. And that was for the NAACP?

Mr. MARSHALL. I might not have said Communists, I said leftwing organizations that are trying to infiltrate this movement.

At that time I did not know that Doxey Wilkerson was in Texas. I had not the slightest idea where he was and I cared less.

Mr. LIPSCOMB. Mr. Chairman, I would like to offer for the record as exhibit 30 of the hearings the dossier on Doxey Wilkerson as prepared from the files of the House Committee on Un-American Activities which establishes longtime connection and affiliation with the Communist Party. This was prepared prior to his ostensible resignation from the party in 1957, and I would also like to offer as exhibit No. 31 that portion of the report of the General Investigating Committee Report to the House of Representatives of the 1957 Legislature of Texas, volume 3, 1961, which deals with the Marshall sit-in demonstrations.

This comprises the first 54 pages of the entire report.

Senator JOHNSTON. It shall become a part of the record.

(The report referred to follows:)

EXHIBIT NO. 30

INFORMATION FROM THE FILES OF THE COMMITTEE ON UN-AMERICAN ACTIVITIES, U.S. HOUSE OF REPRESENTATIVES

JUNE 14, 19[illegible]

For: Hon. James O. Eastland, Chairman, Senate Subcommittee on Interna. Security.

Subject: Doxie Wilkerson.

The public records, files, and publications of this committee contain the following information concerning the subject individual. This report should not be construed as representing the results of an investigation by or findings of this committee. It should be noted that the individual is not necessarily a Communist, a Communist sympathizer, or a fellow traveler unless otherwise indicated.

Organization	Affiliation	Source
Communist Party [1 2]	Signer of statement by Negro leaders protesting attacks against Communist candidates.	Daily Worker, Sept. 16, 1940, p. 1.
Do	Signer of statement to the President defending the Communist Party (Washington, D.C.).	Daily Worker, Mar. 5, 1941, p. 2.
Do	One of the National Committee members of the newly formed Communist Political Association.	Daily People's World, May 31, 1944, p. 4.
Do	Speaker on reelection of Benjamin Davis, Jr., Tompkins Square Club, New York City, Sept. 11, 1945.	Daily Worker, Sept. 9, 1945, p. 4.
Do	Communist Party of Maryland and District of Columbia, Lincoln-Douglass anniversary meeting, Baltimore, Md., Feb. 18, 1946.	Letter issued by Communist Party of Maryland, and District of Columbia Jan. 31, 1946.
Do	Speaker, Baltimore meeting of the Communist Party of Maryland and the District of Columbia.	Daily Worker, Feb. 21, 1946, p. 8.
Do	Member	Daily Worker, Apr. 4, 1947, p. 3.
Do	Signer, statement against ban on Communist Party.	Daily Worker, Apr. 27, 1947, p. 24.
Do	Signer of "Statement by Negro Americans" in behalf of arrested Communist leaders.	The Worker, Aug. 29, 1948, p. 11.
Do	Statement on testimony as member of Communist Party.	Daily Worker, Feb. 14, 1949, p. 4.
Do	Signer of protest to Premier Plastiras of Greece against the execution of 8 Greek (Communists), at freedom rally held Mar. 2, Golden Gate Ballroom, New York City.	Daily Worker, Mar. 4, 1952, p. 3; also the Worker, Mar. 6, 1952, p. 1.
Do	Speaker at meeting held in City Center Casino on March 16, to set up committee for defense of 16 Communists (Educator).	Daily Worker, Mar. 17, 1952, p. 1.
Communist Political Association.[1 2]	Member of national committee	Daily Worker, May 23, 1944, p. 2.
Do	do	Proceedings of the Constitutional Convention of the Communist Political Association, May 20-22, 1944, p. 4.
The Communist [1]	Contributor	The Communist, May 1944, p. 440.
American Committee for Protection of Foreign Born.[1 2]	Sponsor	Program, 5th National Conference, Atlantic City, N.J., Mar. 29-30, 1941.
American Labor Party (1).	Speaker	Daily Worker, Mar. 19, 1949, p. 5.
American Peace Mobilization.[1 2]	Speaker, protest meeting, Murray's Hall, Washington, D.C., Jan. 25, 1941.	Handbill, H.R. 1776, Dictatorship. War.
Do	Signer of call	Call to American people's meeting, p. 4, New York City, Apr. 5-6, 1941.
Do	Chairman, war and education conference	Mimeographed list of officers of committees, Washington peace mobilization.
Citizens Committee to Free Earl Browder (Washington).[1 2]	Sponsor	Washington Post, May 11, 1942, p. 9 (advertisement).
Civil Rights Congress [1 2]	Picket in behalf of Communist leaders	Daily Worker, Sept. 21, 1948, p. 3.
Do	Sponsor, National Civil Rights Legislative Conference, Jan. 18 and 19, 1949.	Leaflet, freedom crusade, program and conference.
Do	Chairman of a conference held at the Yugoslav-American Hall on Saturday, Oct. 24, 1953.	Daily Worker, Oct. 26, 1953, p. 8.
Hungarian Daily Journal-Citizens Emergency Defense Conference.[2]	Photo used in advertisement of Grape Festival to be held Sept. 14, at Castle Hill Gardens, Bronx. He states: "I can't miss this opportunity to greet Elizabeth Gurley Flynn on her 62d birthday."	Daily Worker, Sept. 9, 1952 p. 6 (advertisement).
Committee for a Democratic Far Eastern Policy.[2]	Sponsor	Letterheads 1946 and 1947; letterhead, July 11, 1947; letterhead, May 28, 1948.
Committee to Defend America by Keeping Out of War.[1]	do	Letterhead, Aug. 10, 1940.
Conference on Constitutional Liberties in America.[1 2]	do	Program leaflet, call to a conference on constitutional liberties in America, June 7, 1940, p. 4.

See footnotes at end of table, p. 132.

Organization	Affiliation	Source
Council on African Affairs.[2]	Council member	"For a New Africa," (pamphlet) p. 36.
Do	do	Pamphlet, "8 Million Demand Freedom," inside back cover.
Do	do	Pamphlet, "Africa in the War," inside back cover.
Do	Member	Leaflet, "The Job to be Done."
Do	Council member	Leaflet, "What of Africa's Place in Tommorow's World?" (June 26, 1944).
Do	do	Letterhead, May 17, 1945; leaflet, "What of Africa's Place in Tomorrow's World?"
Do	do	Pamphlet, "Seeing is Believing," 1947, back cover.
Do	Speaker at Harlem Street Rally on Apr. 5 in support of civil disobedience campaign in South Africa.	Daily Worker, Apr. 7, 1952, p. 6.
Daily People's World [1]	Writer of article	Daily People's World, Aug. 11, 1947, p. 1.
Daily Worker [1]	do	The Worker, Southern Edition, Oct. 24, 1948, p. 4, sec. 3.
Do	Photograph; biography; makes special study for Carnegie Foundation.	Daily Worker, Jan. 31, 1949, p. 4.
Do	Writer of letter	Daily Worker, June 14, 1950, p. 11.
Do	Favorably reviews pamphlet, "Agents of Peace" by Albert E. Kahn (Hour Publishers).	Daily Worker, June 27, 1951, p. 1.
Do	Signer of petition urging release of William Alphaeus Hunton, serving sentence for contempt of court.	Daily Worker, Nov. 9, 1951, p. 3.
Do	Writer of letter to editor, New York	Daily Worker, Apr. 9, 1952, p. 4.
Do	Photograph used in advertisement of Grape Festival Sept. 14, Castle Hill Gardens, Bronx, New York City.	Daily Worker, Sept. 9, 1952, p. 6 (advertisement).
Do	Writer of letter to the editor	Daily Worker, Oct. 30, 1952, p. 4.
Do	Sent greetings to the Worker on its 30th anniversary (see statement).	The Worker, Michigan edition, Feb. 7, 1954, p. 10.
Emergency Peace Mobilization Committee of Greater New York.[1 2]	Sponsor	Undated letterhead.
Greater New York Emergency Conference on Inalienable Rights.[2]	Panel speaker at conference	Program of the conference, Feb. 12, 1940.
International Labor Defense.[1 2]	Member, national committee	Undated letterhead.
Do	Chairman, panel discussion	Proceedings and report, p. 16.
Do	Sent greetings to the international labor defense.	"Equal Justice," May 1940, p. 7.
International Workers Order.[1 2]	Guest speaker	Daily Worker, June 16, 1947, p. 4.
Jefferson School of Social Science.[1 2]	Member of staff	Daily Worker, Jan. 29, 1948, p. 10.
	Director, faculty and curriculum	Catalog, winter 1950 of the school (inside front cover).
Do	do	Fall 1951 schedule.
Do	do	Daily Worker, Sept. 14, 1951, p. 3.
Do	Director of faculty and curriculum; in interview with John Hudson Jones tells of fight for Negro—white unity.	Daily Worker, Jan. 10, 1952, p. 2.
Do	Director of faculty and curriculum	Catalog, winter 1952, p. 3.
Do	Member, board of trustees (575 Avenue of the Americas, New York 11, N.Y.).	Spring catalog, April 14, 1957.
Do	Member, board of trustees	Catalog, summer July-August 1947, p. 2.
Do	do	Catalog, September-December 1947, p. 56.
Do	Member, board of trustees, faculty and curriculum; instructor.	Catalog, 1950, inside front cover, pp. 14, 16, 22.

See footnotes at end of table, p. 132.

Organization	Affiliation	Source
Jefferson School of Social Science[1 3]	Member, board of trustees	Invitation, 6th anniversary dinner, Jan. 27, 1950.
	----do	Catalog, winter 1950 (inside front cover).
Do	Instructor, subject of "Women Question"	Daily Worker, July 1, 1952, 8.
	Instructor of course in "Science of Society" and "Political Economy 1: Wages, Prices, Profits."	Catalog for winter 1952, pp. 16, 17.
	Lecturer	Daily Worker, Dec. 4, 1944, p. 7.
	Instructor	Folder, spring term, 1947.
Do	----do	Leaflet (announcing spring term, 1947).
Do	Instructor and guest lecturer; biographical notes.	Catalog, September-December 1948, p. 67.
Do	Instructor or guest lecturer; biographical note	Catalog, fall 1949, p. 59.
Do	Instructor; biography	Catalog, spring 1950, p. 45.
Do	Instructor, "Science of Society"	Catalog, fall 1951, p. 16.
Do	Instructor	Winter catalog, 1951, p. 18.
Do	Teacher: (Author, "Special Problems of Negro Education"; coauthor, "Sociological Foundations of Education and What the Negro Wants." Taught at Virginia State College and Howard University, M.A., University of Kansas).	Catalog, winter 1950, pp. 13, 59, 15, 17.
Do	Lecturer	6th anniversary dinner invitation, Jan. 27, 1950.
Do	Member, board of experts to choose the 50 best books for the library of a progressive anti-Fascist American.	Daily Worker, Dec. 3, 1946, p .11.
Do	Speaker	Daily Worker, Nov. 11, 1947, p. 5.
Do	----do	The Worker, Mar. 7, 1948, p. 11.
Do	----do	Daily Worker, June 14, 1950, p. 11.
Do	Participant in forum	Daily Worker, Aug. 6, 1951, p. 3.
Do	To speak at special lectures on Dec. 11 on "New Developemnts in the Negro Liberation Movements."	Daily Worker, Dec. 11, 1951, p. 7 (advertismeent).
Do	To speak on "Wage Freeze, Layoffs, and the War Drive," Apr. 11, at the school in New York City. To participate in program at Jewish History Week forum on Apr. 27 at Jefferson School.	Handbill, Apr. 7-11, 1952. Daily Worker, Apr. 24, 1952, p. 6.
Do	Leader: cosigner of open letter calling for support of the school.	Daily Worker, Oct. 10, 1952, p. 3.
Do	Writer of ad with David Goldway and Howard Selsam asking support for continuance of school.	Daily Worker. Oct. 14, 1952, p. 8.
Do	Director of faculty and curriculum	Jefferson School of Social Science, actalog for winter 1952, p. 3.
Do	Instructor of courses in "Science of Society" and "Political Economy 1: Wages, Prices, Profits".	Jefferson School of Social Science, catalog for winter 1952, pp. 16 and 17.
Do	Teacher; coeditor of pamphlet, "Questions and Answers on the Woman Question," interpreting Marxist position, published Mar. 9 in observance of International Women's Day.	Daily Worker, Mar. 10, 1953, p. 6.
Do	To lecture on "The Relation of the Women Question to the National Question," Mar. 12 at 8:30 p.m. at the school.	Daily Worker, Mar. 12, 1953, p. 8 (What's on column).
Do	Teacher of Tuesday night course on "The Woman Question" during school's spring term.	Daily Worker, Apr. 14, 1953, p. 8 (advertisement).
Do	Among 5 staff and faculty members who were called before either McCarthy or Jenner committees in past weeks, who will tell how they "fought back in Washington," at a forum at the school, June 7, 8:15 p.m.	Daily Worker, June 4, 1953, p. 7 and What's on column, p. 8.
Do	To be on program of 2d annual dinner for institute students to be held June 16 and 17 at the Jefferson School.	Daily Worker, June 16, 1953, p. 6.
Do	To teach a postelection evening course on "The Negro Worker and the Negro Liberation Movement," beginning Nov. 4, 1953.	Daily Worker, Oct. 30, 1953, p. 4.
Do	Director of faculty and curriculum; signed public statement in re enrollment.	Daily Worker, Jan, 28, 1954, p. 6.
Do	Director of faculty and curriculum; also teacher of course on "The Negro Worker and the Negro Liberation Movement" during the winter term beginning next week.	Daily Worker, Jan. 14, 1954 p. 2.

See footnotes at end of table, p. 132.

Organization	Affiliation	Source
Labor Youth League [1 2] (Brooklyn).	To speak June 30 at Paragon Hall, 4 Brooklyn Ave., Brooklyn.	Daily Worker, June 29, 1954, p. 7.
Labor Youth League (New York).	To speak at forum on "Young America and the Soviet Union" at Golden Ballroom, New York City on Nov. 28.	Daily Worker, Nov. 24, 1952, p. 8.
Do	To speak at forum on Nov. 28 at Golden Ballroom 69 W. 66th St., New York City.	Daily Worker, Nov. 27, 1952, p. 8 (advertisement).
Joint Committee for Trade Union Rights [1]	Signer of telegram to President Roosevelt in behalf of International Fur & Leather Workers Union, defendants.	Daily Worker, Nov. 11, 1940, pp. 1 and 5.
Masses and Mainstream. [1]	Signer of letter defending open letter to Soviet writers.	Daily Worker, May 7, 1948, p. 13.
Do	Reviewed book, "Negro Liberation," by Harry Haywood.	Masses and Mainstream, Dec. 1948, p. 69.
Do	Writer of book review on "Peek sill: U.S.A." by Howard Fast.	Masses and Mainstream, May 1951, pp. 87-89.
Do	Writer of article, "Henry Luce's Revolutionaries."	Masses and Mainstream, Sept. 1951, p. 7.
Do	Writer of article "W. E. B. Du Bois: In Battle for Peace".	Masses and Mainstream, October 1952, p. 34.
Do	Contributed review of "Letters to Americans: 1848-95," by Karl Marx and Frederick Engels, International Publishers.	Masses and Mainstream, August 1953, p. 54.
Do	Writer of article, "Marxists and Academic Freedom."	Masses and Mainstream, December 1953, pp. 38-46.
Do	Reviewed book, "The Negro in Southern Agriculture" by Victor Perlo.	Masses and Mainstream, February 1954, pp. 59-61.
May Day parade [1]	Participant in May Day parade in New York City.	Daily Worker, May 2, 1952, p. 1.
Provisional Committee for 69th Anniversary of May Day. [1]	Spoke at Union Square Demonstration May 1	Daily Worker, May 3, 1954, pp. 1 and 8.
National Council of American-Soviet Friendship. [1 2]	Endorser	Program, "Congress of American Soviet Relations," Dec. 3-5, 1949.
National Federation for Constitutional Liberties. [1 2]	Sponsor	Letterhead, Nov. 6, 1940.
Do	Signer of appeal on behalf of Darcy (Communist)	Daily Worker, Dec. 19, 1940, p. 5.
Do	Panel member at conference	Call National Action Conference for Civil Rights, Hotel Hamilton, Washington, D.C., Apr. 19-20, 1941.
Do	Participant; joint meeting held May 27, 1941, National Press Club (professor of education, Howard University).	Handbill, public hearing, "The People v. the Dies Committee."
National Negro Congress. [1 2]	Discussion leader	Second National Negro Congress, October 1937.
Do	Speaker	Daily Worker, Feb. 12, 1938, p. 4.
Do	Council member	Pamphlet, "For a New Africa".
New Century Publishers. [1]	Author of Pamphlet, "Why the Negro People Should Join the Communist Party."	New Century Publishers Catalog, 1946, p. 7.
Do	Coeditor with James S. Allen of "The Economic Crisis and the Cold War," reports presented to a conference on "Managed Economy," the "Cold War," and the "Developing Economic Crisis" held at the Jefferson School of Social Science, New York, May 14-15, 1949.	Pamphlet published by New Century Publishers, c 1949, contains an introductory essay by William Z Foster.
New Masses [1 2]	Contributor	New Masses, Mar. 24, 1942, p. 21.
	do	New Masses, Nov. 23, 1943, p. 18.
	Contributing editor	New Masses, Apr. 30, 1946, p. 2; July 22, 1947, p. 2.
New York Conference for Inalienable Rights. [1]	Signer of telegram to President Roosevelt and Attorney General Jackson in behalf of International Fur & Leather Workers Union, defendants.	Daily Worker, Sept. 17, 1940, pp. 1 and 5.
People's Radio Foundation, Inc. [2]	Signer of letter to the Federal Communication Commission endorsing the application of People's Radio Foundation for an FM license.	Photostat of letter, Report on Investigation of PRF, July 1946 letterhead, the People's Voice.

See footnotes at end of table, p. 132.

Organization	Affiliation	Source
Political Affairs [1]	Contributor	Political Affairs, July 1946, p. 652.
Do	Edited, together with James S. Allen, "Economic Crisis and the Cold War," published by New Century Publishers.	Advertised in Political Affairs.
Do	Reviews Book, "American Imperialism" by Victor Perlo.	Political Affairs, Apr. 1952, pp. 61-65.
Do	Contributor of article, "Race, Nation, and the concept 'Negro.'"	Political Affairs, August 1952, p. 13.
Do	Reviewer of "The Game of Death—Effects of the Cold War on Our Children" by Albert E. Kahn.	Political Affairs, November 1954, pp. 59-62.
Do	Reviewer of a book of poems, "The Prisoners" by Walter Lowenfels.	Political Affairs, November 1954, pp. 63-64.
Do	Writer of letter, "To the Editor"	Political Affairs, November 1952, p. 64.
Do	Contributed review of "Women Who Work" by Grace Hutchins, published by International Publishers.	Political Affairs October 1953, p. 62.
Schappes Defense Committee. [1 2]	Sponsor	Letterhead, undated.
Do	do	Pamphlet, "In the Case of Morris U. Schappes," p. 10.
Do	Sponsor (Howard University)	Leaflet, "Paul Robeson Says," reporting on a conference held Jan. 10, 1943, New York City (photostat)
Southern Negro Youth Congress. [1 2]	Joined in calling the 4th All-American Negro Youth Conference, New Orleans, April 18-21 (vice president, American Federation of Teachers).	Daily Worker, Mar. 1, 1940 (photostat).
Washington Book Shop. [1 2]	Member (1930 16th St. NW., Washington, D.C.).	Committee file.
Washington Committee for Democratic Action. [1 2]	Sponsor	Call to a conference on civil rights, Apr. 20-21, 1940, p. 4, letterhead Apr. 26, 1940.
Workers Library Publishers. [1]	Author, Pamphlet, "The Negro People and the Communists."	Workers Library Publishers, April 1944.

[1] Cited by the Special and/or Congressional Committee on Un-American Activities.
[2] Cited by Attorneys General.

Also see the following:

Hearings:

October 1939, page 5989.
March 26, 1947, page 41 (testimony of J. Edgar Hoover).
July 21, 1947, pages 32, 34, 36, 47-49, 94, 142, 135 (testimony of Walter S. Steele).
Report No. 1115, Civil Rights Congress as a Communist Front Organization, page 12.
Report No. 1311, CIO Political Action Committee, pages 40, 71, 154.
100 Things You Should Know About Communism (1948), page 9.
Expose of the Communist Party of Western Pennsylvania, part 11, page 2492 (based upon testimony of Matthew Cvetic, undercover agent).
Report on the Congress of American Women, page 75.
Report on the Communist "Peace" Offensive, page 5.
100 Things You Should Know About Communism (1951), page 98.
1953 Hearings, pages 21, 1216, 2730, 2734, opposite 2736, 2741, 2745, opposite 2783, 2793.
1954 Hearings, pages 4473, 4475, 5507.
Organized Communism in the United States, page 121.

EXHIBIT No. 31

GENERAL INVESTIGATING COMMITTEE REPORT TO THE HOUSE OF REPRESENTATIVES OF THE 57TH LEGISLATURE OF TEXAS

MARSHALL INVESTIGATION

WILLACY COUNTY INVESTIGATION

POTTER-RANDALL COUNTY INVESTIGATION

(Vol. III—Austin, Tex., 1961)

HOUSE OF REPRESENTATIVES,
Austin.

Hon. JAMES A. TURMAN,
Speaker of the House of Representatives,
Fifty-seventh Legislature of the State of Texas:

In accordance with H.S.R. 202, passed by the 56th legislature, the house general investigating committee, created thereby, herewith reports to the house of representatives its activities, hearings, conclusions, and recommendations pursuant to its investigation of Marshall sit-ins, Willacy County Navigation District report, and the breakdown of local law enforcement in Potter and Randall Counties.

Respectfully submitted.

MENTON J. MURRAY, *Chairman.*
TOM JAMES, *Vice Chairman.*
LLOYD C. MARTIN.
CHARLES L. BALLMAN.
JOHN ALLEN.

GLOSSARY OF ABBREVIATIONS USED

ACLU—American Civil Liberties Union.
ADA—Americans for Democratic Action.
AFSC—American Friends Service Committee.
CORE—Congress of Racial Equality, Committee of Racial Equality.
CPUSA—Communist Party of the United States of America.
FBI—Federal Bureau of Investigation, U.S. Department of Justice.
FOR—Fellowship of Reconciliation.
FSA—Federal Security Agency, U.S. Government.
HCUA—House Committee on Un-American Activities, U.S. Congress.
MFSA—Methodist Federation for Social Action.
MIA—Montgomery Improvement Association.
NAACP—National Association for the Advancement of Colored People.
NYU—New York University.
OPA—Office of Price Administration, U.S. Government.
SACB—Subversive Activities Control Board, created by Subversive Activities Control Act of 1950.
SCEF—Southern Conference Educational Fund, Inc.
SCHW—Southern Conference for Human Welfare.
SCLC—Southern Christian Leadership Conference, Inc.
SRC—Southern Regional Council, Inc.
UCM—United Christian Movement, Inc.
UFF—United Freedom Fighters.
WF—World Fellowship, Inc.
WFTU—World Federation of Trade Unions.
YMCA—Young Men's Christian Association.

REPORT OF THE GENERAL LEGISLATIVE INVESTIGATING COMMITTEE OF THE HOUSE OF REPRESENTATIVES ON MARSHALL DEMONSTRATIONS

OBJECTIVES OF COMMITTEE

A. To determine whether or not international, national, or other outside influences or pressures are being used, or have been used, within the State of Texas for the purpose of violating property rights, fomenting disturbances of the peace, and conducting economic boycotts against local business enterprises.

B. To determine whether or not the Communist Party, known Communist agents, underground Communist agents, subversives not officially connected with the Communist Party, and professional agitators are active in the sit-in demonstrations and resulting social and economic disruption.

C. To determine whether boycott activities of a direct or secondary nature are being conducted.

D. To determine whether or not a conspiracy composed of Communist-front organizations and other undesirable elements exists for the purpose of teaching and promoting persons to violate property rights through mass demonstrations, boycotts, and other undesirable practices.

E. To determine whether facilities supported by funds from public tax sources, and by funds from public solicitations and drives for school construction and operation, and tax-exempt facilities, have been used to aid and abet such conspiracy for agitation.

F. To determine whether or not the permanent injunction issued by the seventh judicial court of Smith County against the National Association for the Advancement of Colored People is being violated.

G. To determine the effect of deliberate economic and racial agitation in the State of Texas and to recommend legislation aimed at strengthening the ability of the State of Texas to maintain the harmonious and peaceful relationship between the races which has existed for so many years in this State.

REPORT ON RACIAL AGITATION AND THE COMMUNIST CONSPIRACY

Background

The extent and influence of the Communist conspiracy in racial agitation has been increasing. It has been advocated in the report delivered by Benjamin J. Davis, chairman of the Negro Commission of the Communist Party, at a meeting of the Communist Party's National Committee, in New York, June 23–24, 1956, and in the draft resolution adopted by the National Committee of the Communist Party for the presentation at the Communist Party's 16th National Convention. In Political Affairs, the official mouthpiece of the Communist Party in the United States, concerning the 47th Annual Convention of the National Association for the Advancement of Colored People, the technique of disciplined nonviolence is hailed as a philosophy of active mass struggle on the part of the Negro people, and the NAACP is described as "the most vital and authoritative center of Negro militant protest, organized mass struggle." And there have been many other indications of an increasing Communist influence in agitating racial unrest and class warfare, inciting public disorder, and creating disrespect and contempt among Negro citizens for established law and order.

In Texas, the attention of the public was suddenly focused on these matters during the last few days of March 1960, and the month of April, when sit-in demonstrations erupted at Marshall, Tex., following disorderly demonstrations across the country. The question of Communist influence became prominent when the Bishop College professor of education, who led the nine students from Bishop and Wiley Negro Colleges in the first demonstration, was identified as Dr. Doxey Alphonso Wilkerson, a former Negro member of the high-ranking National Committee of the Communist Party, a former Communist Party organizer and active for many years in dozens of Communist and Communist-front organizations.

Gov. Price Daniel ordered an investigation to determine what part Doxey Wilkerson played in the demonstrations at Marshall and at Houston. Judge Sam B. Hall ordered the Harrison County grand jury to probe for any outside influences in the unlawful activities.

An aroused citizenry, many of whom were being solicited in an effort to secure contributions totaling $1 million to move Bishop College from Marshall to Dallas, demanded to know who had approved the employment of Dr. Doxey Wilkerson, who had announced to the press on December 12, 1957, that he was "reluctantly" resigning his membership in the Communist Party as of November 25, 1957, because he felt that he could make a more "constructive contribution" to the "social goals which had long guided my adult life" outside of the framework of the Communist Party. This press announcement preceded by less than 1 month the public "resignation" of longtime Communist Party official, John Gates, who, following his resignation, achieved a place of prominence as a speaker at numerous universities and colleges across the Nation, including Southern Methodist University at Dallas.

With the excellent assistance and cooperation of the intelligence section of the department of public safety and other official agencies, an investigation of the demonstrations, the events leading up to them, and the general background of the definite conspiracy which promoted them was commenced. Much more information was obtained by the committee that can be detailed in this report.

Numerous individuals and organizations are involved, but a significant fact stands out—throughout all of this activity the names of certain agitators appear and reappear with ominous regularity in first one organization and then another. When an organization is exposed as subversive or Communist controlled, frequently its reaction is simply to change its name and continue with the same objectives and same officers. The committee found, also, that many of these organizations have overlapping boards and officers, resulting in a close alliance between organizations which in the public view are separate and distinct.

The committee had scheduled public hearings, intending to issue subpenas and obtain sworn testimony, but this was precluded by a combination of circumstances. Numerous witnesses were interviewed, polygraph tests were given, investigations of events and background activities were made, and various aspects of the numerous demonstrations were probed. The unmistakable evidence shows that an intertwined network of individuals and organizations lies behind this agitation.

Many of these individuals and organizations have been identified by agencies of the U.S. Government as an actual part of the Communist conspiracy, taking orders from Moscow. Many are "fellow travelers" whose activities are aiding the Communist objective of disruption of our peaceful way of life just as surely as the identified Communist Party member or Communist organization. No less dangerous are the "dupes" who are used by the Communist conspiracy to advance the cause of communism, and hasten the overthrow of our governments, local, State, and National. Wherever the cause of communism is advanced to any degree, then by such degree part of our country has been turned over to a foreign power dedicated to the complete overthrow of our form of government.

Georgi Dimitrov, in an address to the Lenin School of Political Warfare, stated:

"As Soviet power grows, there will be greater aversion to Communist parties everywhere. So we must practice the techniques of withdrawal. Never appear in the foreground; let our friends do the work. We must always remember that one sympathizer is generally worth more than a dozen militant Communists. A university professor who, without being a party member, lends himself to the interests of the Soviet Union, is worth more than a hundred men with party cards. A writer of reputation, or a retired general, are worth more than 500 poor devils who don't know any better than to get themselves beaten up by the police. Every man has his value, his merit. The writer who, without being a party member, defends the Soviet Union, the union leader who is outside our ranks but defends the Soviet international policy, is worth more than a thousand party members."

Frequently pro-Communists loudly defend the actions of a subversive individual or organization with the statement that such individual or organization has not been officially identified as a Communist Party member or as a Communist-controlled organization, or has publicly "resigned" from the Communist Party. In considering that position, the testimony of Hede Massing, a former participant in the Communist conspiracy, before the U.S. Senate Internal Security Subcommittee, who, when asked whether she distinguished "between being an actual member (of the party) and a member in 'spirit,'" replied:

"Why, Senator McCarran, I would believe that even then (1938), and, of course, much more today, there are many more members in spirit than actually card-holding party members, because, as I have explained very often—and I hate to do this, but I think it is rather necessary—for many party members it is an order not to take out party membership."[1]

Another former German party member, Dr. Karl Wittfogel, who testified before the U.S. Senate Internal Security Subcommittee, explained underground Communists this way: "If you lay all your cards on the table, how can you play the game?"[2]

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[1] Hearings before the Senate Internal Security Subcommittee of the Committee on the Judiciary, 82d Cong., July 25, 1950–June 20, 1952, p. 225.

[2] Ibid., p. 310.

The technique of sit-in demonstrations, "nonviolence," passive resistance, secondary boycotts, strikes, and general pitting of one group or "class" against another has long been used by agitators as part of the general "class warfare." Such methods have not been confined to the United States. A known example involving sitdowns and some of the agitators presently active in Texas, is one described in the U.S. House Committee on Un-American Activities report on "The Communist 'Peace' Offensive, a Campaign To Disarm and Defeat the United States."

On page 133 of the House committee report are listed 11 names of Texas sponsors of the Communist-controlled Stockholm appeal, including that of "Rev. M. K. Curry, Wichita Falls."

DR. MILTON K. CURRY, JR., PRESIDENT, BISHOP COLLEGE

In 1937 or early 1938, a Negro couple, Milton K. Curry, Jr., and his wife, Marjorie S. Curry, came to Wichita Falls, Tex. Both were teachers at the Booker T. Washington School there until 1945, at which time Curry became pastor of the Antioch Baptist Church in Wichita Falls, where he remained until he left Wichita Falls in 1952. They lived at 600 Sullivan Street in Wichita Falls. The present tenants of the house rent it from Rev. Milton K. Curry, Jr., now president of Bishop College, Marshall, Tex. Dr. Curry is the Bishop College president who defended Doxey Wilkerson after he led the sit-in demonstrations, and who called Wilkerson the "scapegoat" of a "prejudiced press."

Dr. Curry was also listed as a sponsor of a southwide conference on "Youth and Racial Unity Through Educational Opportunity," which was held at Allen University, Columbia, S.C., December 29–31, 1953, under the coordination of the Southern Conference Educational Fund, Inc., cited as a Communist front. Dr. H. D. Bollinger was chairman of sponsors and the following were among those listed from Texas: Marshall; President M. K. Curry, Jr.; Dr. Charles L. Knight, director of counseling and admission; Dean Melvin P. Sikes, Bishop College; Prof. Obbie Z. Brown, professor of chemistry; Prof. William A. McMillan, chairman, division of education, Wiley College; Rev. Andrew J. Newton; from Austin, Sam M. Gibbs; Rev. Robert E. Ledbetter, Jr., associate, Dr. Wesley Bible Chair, University of Texas; Ruby Kellough, Huston-Tillotson College; from College Station, Rev. Norman Anderson, Texas A. &. M. Presbyterian Church; from Corpus Christi, Jesse Ray Cobb, president, student government, University of Corpus Christi; from Dallas, Maye W. Bell, director, Methodist Student Movement, SMU; Attorney Kenneth Holbert; William E. Hogan, associate secretary, Southwest Area Council, YMCA; Roosevelt Johnson, Moorland Branch, YMCA; D. Ned Linegar, associate secretary, YMCA; Bert Lyle; Dr. Albert C. Outler, Perkins School of Theology, SMU; R. M. Williams, attorney; from Hawkins, Henry P. Moye, chairman, CYF, Jarvis; William W. Bennett, librarian, Jarvis Christian College; from Houston, Isaac C. Dugas, Jr.; Dr. Thomas F. Freeman, head, department of philosophy and director, religious activities; Elva K. Steward; Barbara O'Cele Thompson, "Spirit of Cotton, 1952," Texas Southern University; Robert A. Childers, Childers Manufacturing Co.; Quentin R. Mease, executive secretary, YMCA; Carter Wesley, president, Freedmen's Publishing Co.; Mrs. Lulu B. White, director of branches, State of Texas NAACP; from Kingsville, Dr. J. Dewitt Davis, chairman, department of education and psychology; Roger E. Richards, dean of men, Texas A. & I. College; from Lubbock, James Dent, Texas Technical College; from Plainview, Don Reed, president, Wayland Baptist College Student Government; from San Antonio, Kenneth McCall, field secretary, United Christian Youth Movement, Trinity University; from Waco, Rev. William H. Cole, executive secretary, Methodist Field Work for Central Texas; Dean Amos J. White, Paul Quinn College.

The Southern Conference Educational Fund (SCEF) has played an important role in stirring up racial agitation by means of sit-in demonstrations or other means. The House Committee on Un-American Activities states that the SCEF was initially an adjunct of the notorious Southern Conference for Human Welfare (SCHW) which was cited by the House Committee on Un-American Activities as a Communist front which received money from the Robert Marshall Foundation, one of the principal sources of funds by which many Communist fronts operate.[3] SCHW was cited by the committee as a Communist-front organization "which seeks to attract southern liberals on the basis of its seeming interest in the problems of the South," although its "professed interest in

[3] H. Rept. 1311 on the CIO Political Action Committee, Mar. 29, 1944, p. 147.

southern welfare is simply an expedient for larger aims serving the Soviet Union and its subservient Communist Party in the United States." [4]

The U.S. Senate Internal Security Subcommittee held hearings in New Orleans, La., on March 18–20, 1954, "respecting subversive influence in the Southern Conference Educational Fund, Inc." A statement, which accompanied the hearings, when released in 1955, states:

"* * * The principal points in the testimony are as follows: The Southern Conference for Human Welfare was conceived, financed, and set up by the Communist Party in 1938 as a mass organization to promote communism throughout the Southern States. * * *

"The Southern Conference Educational Fund, Inc., was initially an adjunct of the Southern Conference for Human Welfare. After the exposure of the Southern Conference for Human Welfare as a Communist front, it began to wither and was finally dissolved, but the Southern Conference Educational Fund, Inc., continued. The official paper, the Southern Patriot, which was published by the Southern Conference for Human Welfare, was taken over by the Southern Conference Educational Fund, Inc., which professes the same ostensible purpose.

"An objective study of the entire record compels the conclusion that the Southern Conference Educational Fund, Inc., is operating with substantially the same leadership and purposes as its predecessor organization, the Southern Conference for Human Welfare. * * *"

M. K. Curry, Jr., is also listed as a signer of the Melish brief amici curiae filed with the U.S. Supreme Court, January 13, 1951, on behalf of William Howard Melish, an Episcopal Church clergyman, formerly the associate rector of the Church of the Holy Trinity in Brooklyn, N.Y., who has been publicly identified as a member of the Communist Party and whose bishop ordered him removed from his position due to his extensive Communist and Communist-front activities.

In view of this earlier background of Dr. M. K. Curry, Jr., his response to the demonstrations by students of Bishop College and to the earlier connections of Dr. Doxey Wilkerson with the Communist Party is most interesting. Most of the students insisted that the demonstrations were spontaneous, but one or two students, who obviously had not absorbed all the coaching and instructions for the festivities as well as the others, stated in television and press interviews that, "We are getting outside advice on how to do things and we get advice from Dr. Simpkins." Most college presidents instigate investigations immediately when student demonstrations or other unruly activities occur, in an effort to determine the leaders and take disciplinary action. But this was not Dr. Curry's reaction toward student demonstrations and sit-ins. His attitude then and afterward has been defensive about the entire matter, as shall be shown.

MARSHALL WARNING

The authorities of Marshall, Tex., which has a Negro population of approximately 52 percent, tried repeatedly to pursue a policy of warning the demonstrators that any threat to public peace would be treated as a law violation, but they stated that prosecution would be "held in abeyance" unless the students persisted in continuing the unlawful assembly. The statement released by the city commission on Monday, March 28, 1960, included the following:

"We must have law and order in Marshall. Regardless of who the citizen is, he is going to be protected in pursuing his legal rights.

"Under this country's free enterprise system and under our laws, a merchant has the legal right to select the patrons he serves. He is going to be protected in that right. Likewise, a customer has the right not to be forced to trade with a merchant with whom he does not want to deal.

"We recognize the right to demonstrate. But we call attention that the right to demonstrate in all cases is limited by the fact that, if there is any clear and present danger that the demonstrations will incite public disorder, it is unlawful and will be handled as a violation of the law."

The Harrison County Interracial Commission, made up of five Negroes, five whites, and a chairman, and dating back more than 80 years, became one of the first casualties of the agitation. The commission had grown out of a reign of terror begun in Marshall by self-seeking carpetbaggers soon after the War Be-

[4] H. Rept. 592 on the Southern Conference for Human Welfare, June 16, 1947, pp. 1 and 13.

tween the States, and for nearly a century the two races, with the Negroes in the majority, had lived together in harmony. But the sit-in disturbances created such tension in the community that efforts to call the commission together were unsuccessful. Still, President Curry and President T. W. Cole, Sr., of Wiley College, failed to control the students, and the demonstrations continued, with large numbers of peace officers assembled and large crowds of students continuing to mass. After repeated warnings, firehoses were used to break up the crowds of hundreds of students in the courthouse lawn and a number of students were arrested and charged with unlawful assembly. The situation had become more serious when about 50 young white men appeared on the other side of the courthouse. The whites complied with requests to return home, but the Negro students refused to disperse until the firehoses were turned on.

Romeo Williams, a Negro attorney of Marshall and Dallas, told authorities that he helped organize the demonstrations. He said that assistance in procuring money for bonds or fines would be provided by the National Association for the Advancement of Colored People and that he and his partner, C. B. Bunkley, Jr., Dallas Negro attorney for the NAACP, would serve as legal counsed for the Marshall students. Bunkley emphasized that he did not come to Marshall in his capacity as NAACP attorney, but in response to "a letter from Negro students" asking legal help, and he and Williams met in closed session with some of the students March 31.

On March 30 the Dallas News and other papers carried a partial listing of some of Doxey Wilkerson's activities with the Communist Party and raised the question as to his part in the demonstrations. Some citizens who had pledged liberal contributions to the campaign being conducted to raise $1 million to move Bishop College to Dallas became alarmed at the prospect of transferring a possible source of agitation from a comparatively isolated location to a large city such as Dallas where subversive forces could wield influence over a much larger population. In view of Dr. Curry's inactivity, they began to cancel and withdraw their pledges. Dr. Curry hastened to Dallas for a conference with Mr. Carr P. Collins, Sr., chairman of the committee soliciting the funds and a member of the Bishop College Board of Trustees. In a telephone conversation with Doxey Wilkerson from Dallas, Dr. Curry "advised" Dr. Wilkerson to resign. Curry released a statement to the press saying, "I have decided that in light of this situation his further services with the institution should be discontinued and I have advised him." At the same time, Dr. Curry gave Doxey Wilkerson high praise as one of the most valuable men on the Bishop faculty and one of the most Christian. He said he investigated Doxey Wilkerson's background thoroughly, "checking with a number of reliable people over a period of 4 to 5 months," and that he was convinced that Wilkerson's break with the Communist Party was "abrupt, complete, and final." The following day Dr. W. R. White, president of Baylor University and chairman of the board for Bishop College, was asked by the press if Doxey Wilkerson was hired as professor of education, chairman of division education, and director of student teaching at Bishop College, with the knowledge and/or blessing of the Bishop College board. Dr. White replied that his service on the board is largely advisory and not a close association, and said, "I knew nothing of his background until I read it in news reports. I don't recall the matter ever being discussed by the board while I was present."

At any rate, Doxey Wilkerson refused Dr. Curry's "advice" to resign and Dr. Curry wrote him a letter of dismissal, although he said it "went hard against the grain." Doxey Wilkerson's wife, Yolanda Wilkerson, was informed that she could remain on the staff of Bishop College if she so wished. Wilkerson's salary was paid to July 1, 1960.

DOXEY AND YOLANDA WILKERSON

At this point it seems proper to include in this report facts in the record of Doxey Wilkerson and his wife, Yolanda, which were available to or known by Dr. Curry and the Bishop College board before employment of the Wilkersons. Parents of students attending an educational institution, members of the public helping to sustain it through contributions, and taxpayers contributing to tax funds which go to tax-supported schools and, through Federal grants, to numerous private tax-exempt colleges, have a right to expect that reasonable care will be exercised not only in ridding an institution of subversive influences but in investigating members of the staff carefully before they are employed. Agitators dedicated to the overthrow of our form of government undoubtedly are inimical to the interests of our schools.

First, consider Doxey Wilkerson's "resignation" from the Communist Party, bearing in mind that it has been established that the Communist Party does not work openly but covertly. Many times Communist Party members have been given orders to publicly "resign" and "go underground" in order to achieve certain objectives. Sworn testimony from former Communists, who have backed their renunciation of communism by cooperating with U.S. authorities to expose Communist subversion, has brought out the fact that a devoted "member in spirit" can frequently wield much more influence outside of the party. As an example, John Gates was asked to speak to students at universities throughout the country, including Southern Methodist University at Dallas, after he "resigned" from the Communist Party, whereas as a Communist Party member he would not have enjoyed such distinction. But one important fact should be remembered about Dr. Wilkerson and Mr. Gates, whose "resignation" came less than a month after Dr. Wilkerson's announcement. This important fact is that both men made it clear that they were in no way forsaking the philosophy which had guided their lives throughout all the years in which they were part of the Communist conspiracy; namely, to change and overthrow, either by peaceful or violent means, the form of government which loyal Americans have established and uphold in this country. Neither man made any effort to assist Government committees or to expose the workings of the Communist conspiracy to public view.

Doxey Wilkerson's resignation reads as follows:

"RELEASED TO THE PRESS ON DECEMBER 12, 1957, BY DOXEY A. WILKERSON—PRESIDENT 4-2637

"Mr. SIDNEY STEIN,
"*Organization Secretary,*
"*Communist Party, U.S.A.,*
"*23 West 26th Street, New York, N.Y.*

"DEAR SID: I hereby tender, through your office, my resignation from membership in the Communist Party.

"I still cherish and will continue to work for the social goals which have long guided my adult life—an America where men of all races and creeds can walk together in dignity and equality, where thought and speech are truly free, where political processes are genuinely democratic, and where the vast material resources of our nation are geared to the people's needs.

"After long and mature deliberation, however, I have come—reluctantly but irrevocably—to the conclusion that, especially in the light of recent developments, the Communist Party no longer affords a framework within which I can make a constructive contribution to these ends.

"Cordially,

"(S) DOXEY A. WILKERSON."

"Copies to: MM Benjamin J. Davis, Jr., and George Charney, Cochairmen of the Communist Party of New York."

Doxey Wilkerson, who joined the Bishop College faculty as professor of education in September 1959, included in his application for employment the following remarks:

"As an alternative to college teaching, I would accept a position doing research in the field of education of sociology; or work in the human relations field.

"My wife, who is also studying for the doctorate, is an experienced and currently employed teacher on the junior high school level, especially in the fields of mathematics and social studies. We hope to find positions in the same community.

"For a number of years I was associated with the Communist movement, with which I have since broken completely and irrevocably, issuing a public statement to that effect. I should want fully to discuss this background and my perspectives with any prospective employer."

It will be noticed that it was the purpose of Wilkerson to remain in fields where he could influence youth and/or human relations. Attached to his application were statements, with varying degrees of enthusiasm, from the following: Alonzo F. Myers, New York University; Louis E. Raths, NYU; Chas. H. Thompson, Howard University; John W. Davis; Robert Karlin, NYU; A. J. Foy Cross, NYU; and Dan W. Dodson, NYU.

Interesting were the remarks of Dr. Dodson, who appeared as a panel moderator of September 2, 1959, during the Methodist Conference on Human Relations

at Southern Methodist University. His statement concerning Wilkerson's qualifications was as follows:

"This man's case is one which is almost certain to trouble the consciences of most of the people who examine his recommendations. Doxey Wilkerson is an extremly intelligent, capable, well-trained person. He is an idealist with the courage of his convictions. He is Marxist in his ideological orientation but he is not a blind follower of party lines. He firmly stood his ground and did not resign from the Jefferson School which had been accused of Communist leanings during the time that it was under heavy attack. He did resign publicly from the Communist Party after McCarthyism had blown over but at the time at which he became convinced that the party was no longer serving the principles which he believed in. He has never, to my knowledge, tried to hide the identification that he has had with the Communist or other leftwing programs. It has been an honest, straightforward association and identification. When he came to us to work for a doctorate, the concern I had was whether he could do objective research. On this point I am completely convinced at the present time. I believe that he is a person who does not let his emotional allegiances [sic] get in the way of objective data. In this age of conformity, *American colleges and other institutions of higher learning need more of the challenge which a Doxey Wilkerson could bring.* It will be a sad day for America when men who are honestly dedicated to the pursuit of truth and knowledge find no place on college campuses because they dissent from what are the dogmas of the day. Wilkerson would never take advantage of his professional position to indoctrinate or otherwise try to propagandize for any principles which he believed. All he would do either in research or in writing would be to seek understanding and invite students to investigate with him in the best of academic tradition. I am writing this recommendation wtih full knowledge of the problems involved in his employment by a college or university. However, *I am convinced that Doxey Wilkerson would make a great contribution to the academic life of a compus if he were given the opportunity of teaching.* I am not here attempting to justify the beliefs that the man possesses. These are his and are personal. I am simply saying that in light of the great ideological struggle in which we are engaged, we had better have people who have honestly believed in the other side help teach and see if we can meet their arguments on our own campuses. Our fear of meeting this kind of challenge is in itself an indication of our own weaknesses. We took Wilkerson as doctoral candidate because we believed he could do objective research and interpretation of data. In this we have not been disappointed and I would like to recommend him to colleges and universities in the same spirit.

"(Signed) DAN W. DODSON,
"Director, Center for Human Relations and Community Studies,
"School of Education, New York University, New York, N.Y."

The statements made by Dr. Curry, Dr. Dodson, and Dr. Wilkerson all emphasize his "honest, straightforward" stand, his failure to try "to hide the identification that he has had with the Communist or other leftwing programs." Of course, the Communist policy itself is devious and filled with subterfuge and is anything but "honest and straightforward." Wilkerson's testimony before the Senate Internal Security Subcommittee on March 24, 1953, also was a matter of public record for many years before Dr. Curry or Dr. Dodson praised his honesty and forthrightness and it could hardly be described except by opposite terms. In his prepared opening statement were these diabolical remarks: "My appearance before this subcommittee is in response to subpena. I want to make it clear at the outset that I have nothing but contempt for the efforts of this subcommittee to subvert academic freedom in the schools and colleges of our country." Following his prepared statement, he either was "unable to remember" or he refused to answer most of the questions asked him. Fifteen times he took refuge in the fifth amendment when asked questions as to whether he was attending secret meetings of the Communist Party while he was in Government employment or serving as a research associate of the President of the United States, Advisory Committee on Education; whether he was a member of the Communist Party while he was serving as a faculty member of Howard University, supported by Federal funds; or while he was on the faculty of Virginia State College, from 1935 to 1943; or while he was research associate of the Carnegie Corporation; or whether he had served on the National Committee of the Communist Party.[6]

[6] "Subversive Influence in the Educational Process," hearings before the Senate Internal Security Subcommittee of the Committee on the Judiciary, 83d Cong., Mar. 19, 24, 25, 1953, pp. 637–643.

A similar disregard for "straightforward honesty" was shown by Doxey Wilkerson while he was serving as director of curriculum at the Jefferson School of Social Science and teaching the "several social sciences from the Marxist point of view." This school, with a student body of 2,000–4,500, was placed on the Attorney General's list as subversive and cited as an "adjunct of the Communist Party" in December 1947. Earlier it had been noted by the Special Committee on Un-American Activities, House Report 1311 on the CIO Political Action Committee, March 29, 1944, page 150, that the Jefferson School of Social Science resulted from the merger of the old Communist Party Workers School and the Communist-controlled School for Democracy. Despite this, Doxey Wilkerson joined the school in March 1948 at a $1,300 reduction in salary from his previous employment, as executive editor of The People's Voice under Adam Clayton Powell. He remained with the school until it was closed in December 1956, after it had been ordered to register as a Communist-front by the Subversive Activities Control Board on June 30, 1955.

Dr. Dodson says Wilkerson "firmly stood his ground" and did not resign when the school was "accused" of "Communist leanings" and "under heavy attack." Examine the facts brought out in sworn testimony in the official hearing before the SACB. The facts are that actual Communist Party control of the school was proved, not just "Communist leanings," and that Doxey Wilkerson and the school reacted to legal orders from a U.S. Government agency by adopting "underground" tactics. It had been decided at a meeting of the Communist Politburo in 1943 that the schools be merged and the name of Jefferson was chosen in accordance with Earl Browder's insistence that traditional American history be used to advantage in developing Communist technique.

The SACB report, page 62, states:

"In the summer of 1950, Doxey Wilkerson informed Clontz that as a result of the trial in New York of the 11 Communist leaders, it had been established as a matter of law that Marxism-Leninism included, by its very nature, violent revolution; that the party was, therefore, calling in all study outlines and courses which dealt with revolution; and that henceforth in the Jefferson School new outlines would be written, which would omit references to violent revolution, leaving the doctrine to be supplied orally in classes; and that actually these principles would continue to be taught at the Jefferson School. Clontz was taught this doctrine subsequent to the withdrawal of these documents.

"During this period, in order to see Doxey Wilkerson, security measures required a code message to be given the telephone operator located in the school who in turn contacted Wilkerson and obtained clearance from him. A pass was then issued which the elevator operator checked. The stairs leading to the offices of Wilkerson * * * were kept locked, and it was necessary to use the elevator to reach [his] office.

"When Clontz reregistered in the spring of 1951, greater security regulations were in effect. No name, alias or otherwise, was taken down by the school during registration (simply the occupation being noted) * * * Clontz' party status, filled out the class card. The student kept half of the class card and the other half was retained by the school.

"Students were not permitted to use the stairs, but were required to ride the elevator. The operator also acted as a guard and physically checked each classroom after every session to see that no one remained behind. These precautions were to prevent unauthorized persons from entering the classrooms. These security measures were heightened in the fall of 1951, and more careful checking of class cards was undertaken to insure that no unauthorized person gained admittance to the classrooms. Whereas in 1950, students were called by their first names in classes, it became the practice, in 1951, not to use names in the classrooms."

The Subversive Activities Control Board report continues, pages 101–102:

"In the winter of 1952, Clontz took 'The Negro Liberation Movement' course, also taught by Doxey Wilkerson. * * * The term 'Marxist movement' was taught to be interchangeable with 'Communist movement.' Students were told that the key struggles in the South were the land question, and the struggle against Jim Crowism in general. * * *

"The Communist Party position that the Negro group is an oppressed nation entitled to self-determination was also taught. Students were told that the Negroes and the white working class in the United States are oppressed in common by capitalists and that by uniting they could eliminate the capitalists; that this forms the basis of the party's tactical approach, such as spearheading the

struggle for the Scottsboro boys; and that the struggle for Negro rights did not happen accidentally, but is a party-led effort to unite them against United States imperialism.

"I was taught that the Negro liberation movement's main blows will be against the imperialists in the South; that the Negro in the South after the Civil War was reestablished in a semifeudal state by the plantation owners; and that the land is owned by Standard Oil and Chase National Bank. Students were instructed that education alone would not free the Negro; that it would take force to change the economic structure; and that this force would probably involve the use of guns. * * *

"It was further established as taught that one-third of the world, led by the Soviet Union, is the peace camp; that this camp has allies outside capitalist countries in the form of Communist Parties and that in the event of war between the Soviet Union and capitalist countries, the capitalists would also have to fight Communist Party members within the confines of their own countries. The imminence of such a clash was pointed to as one of the most significant factors to give the students, as Communists, hope for a revolution in the not too distant future."

The report continues, pages 106–107:

"Clontz was further told by Wilkerson that as a result of the trial of the 11 Communist leaders at Foley Square, all courses and outlines dealing with revolution were being called in by the party's national education commission; that new outlines were to be used in the school leaving some things unsaid, which the teachers would supply orally in class; and that the Communist Party would continue actually teaching through the respondent the principles embodied in the recalled materials.

"Clontz read and discussed with Wilkerson and Junius Scales these provisions in the constitution of the Communist Party: Article 8, section 3, * * * and article 4, section 9 * * *.

"Concerning article 8, it was explained to Clontz that to some extent that party has always been forced to conceal its true purpose to satisfy the legal requirements of the times and to say things for public consumption which party members actually understood differently. * * *

"A number of times, in discussion with Wilkerson, it was pointed out to Clontz that in 'these trying times it is necessary to state certain things in writing and leave certain things unsaid'; but that actually the party's position concerning violent revolution had not been changed and would not be changed; and that if revolution were 'declared illegal,' the party would '* * * change its public expressions to keep itself within the realms of legality.'"

Thus Doxey Wilkerson's views on "straightforward honesty" and his goals had been a matter of public record for several years before he was recommended by Dr. Dodson or Dr. Curry. Remember his resignation emphatically stressed that he would continue to work for the goals which had guided his entire life.

From all indications, Doxey Wilkerson had previous experience in serving "underground" in the Communist Party. A great fanfare was made in the Communist Daily Worker in June 1943, when it was announced that Prof. Doxey Wilkerson was resigning as associate professor of education, Howard University, and as education specialist, Office of Price Administration, in order to accept "permanent employment" in the education program of the Communist Party of the United States. It was announced that he had "joined" the Communist Party on June 20, 1943. But in the light of testimony from J. Edgar Hoover, Director of the Federal Bureau of Investigation, it becomes obvious that Mr. Wilkerson had been a party member long before he announced that he had "joined" the Communists. On March 26, 1947, Mr. Hoover testified before the House Committee on Un-American Activities that on March 7, 1942, the FBI had delivered to the Federal Security Agency a 57-page report indicating that its employee, Doxey Wilkerson, had been and probably still was a Communist. The FSA, however, decided to keep Wilkerson in its employ and he later left the FSA voluntarily for another Government job at a higher salary in the Office of Price Administration, as an education specialist, where he stayed until he resigned to "join" the Communist Party education program. In May 1944, he was listed as a member of the national committee of the Communist Party, less than 1 year after he had "joined" the party. J. Edgar Hoover pointed out a regulation of the Communist Party which requires that an individual must have been a party member continuously and in good standing for at least 4 years before he can become eligible for membership on its national committee.

After the dismissal on March 31, 1960, of Dr. Doxey Wilkerson as professor f education at Bishop College, his wife, Yolanda Barnett Wilkerson, continued in her position at Bishop College as instructor in education and counselor and director of testing. Mrs. Wilkerson had also taught at the Jefferson School of Social Science,[7] one of her subjects being "Science of Society—An Introduction to Marxism." The SACB report on the Jefferson School, page 66, states: "All faculty members who taught Marxist-Leninst courses at the Jefferson School were known to Mayer [a Communist Party official and teacher at Jefferson School] to be Marxists-Leninists subject to party discipline." It was further established by four other witnesses during the hearing that only party members taught the basic Marxist-Leninist courses at the school.[8]

Mrs. Wilkerson was subpenaed to appear before the New York Joint Legislative Committee and to bring certain records with her on August 25, 1955, in connection with the committee's investigation of certain "Charitable and Philanthropic Agencies and Organizations." Mrs. Wilkerson was an uncooperative witness and took the fifth amendment in refusing to answer questions as to whether she or her husband were, or ever had been, members of the Communist Party; their connections with, or classes taught at, the Jefferson School for Social Science; her connection with Mrs. Eugene Dennis; and the names of persons associated with her while she served as secretary of the United Summer Appeal for Children, which organization sent selected children to various summer camps, including Camp Kinderland, Hopewell Junction, N.Y., cited by the House Committee on Un-American Activities as under Communist ownership and management.[9]

The committee report includes the following statement:

"Mrs. Wilkerson, an identified Communist (a teacher in the Jefferson School of Social Science and the wife of Doxey Wilkerson, a top-level Communist Party official) testified as secretary of the United Summer Appeal for Children, an organization whose list of officers and sponsors contains a veritable "who's who" of the Communist Party." [10]

Yolanda B. Wilkerson is listed as a signer of appeal entitled "First Line of Defense" in Daily Worker, August 29, 1948, addressed to the President of the United States and to the U.S. Attorney General "condemning your hysteria-breeding arrests of National Communist Party leaders."

Exhibits 185B and 185C, pages 7426–7427, Part 2: Communist Political Subversion, HCUA, 1956, refer to Yolanda Wilkerson as secretary-treasurer of Local 19, United Office & Professional Workers of America, CIO, as sponsor of the Provisional United Labor and Peoples Committee for May Day 1949. The UOPWA was cited by the Special Committee on Un-American Activities in 1940 and again on March 29, 1944, as having Communist leadership strongly entrenched. The union was expelled from the CIO on grounds of Communist domination, February 15, 1950.

Yolanda Wilkerson is listed as a speaker, April 26, 1951, on "Civil Liberties and the Medical Profession," Cornish Arms, 311 West 23d Street, New York City, on a program of the New York Council of the Arts, Sciences & Professions, cited as a Communist front by the House Committee of Un-American Activities (1949) and by the Internal Security Subcommittee of the Senate Judiciary Committee (1956).

The foregoing facts and background material deal with various activities of Doxey Wilkerson and his wife before he was employed as professor of education at Bishop College. Some of the facts concerning his activities after he "resigned" from the Communist Party and was employed by Bishop College have been brought out by the committee investigation notwithstanding attempts to maintain extreme secrecy and to keep Dr. Wilkerson in the background as much as possible and still utilize his long years of experience as an active Communist Party functionary. Needless to say, many of his actions still remain closely guarded secrets. Students and others attending some of the secret meetings were threatened with bodily reprisal and perhaps death if news of the event "leaked" beyond the participants. In a few instances, where a participant was even suspected of "talking," beatings were administered, although in several cases the

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[7] Daily Worker, Apr. 28, 1952, p. 4.
[8] Report, Subversive Activities Control Board, June 30, 1955, p. 66.
[9] Committee on Un-American Activities, Annul Report for 1955, H.R. 1648, Jan. 17, 1956, originally released Jan. 11, 1956, pp. 2, 8, and 9.
[10] Legislative Document No. 62, 1956, p. 22, Joint Legislative Committee of the New York State Legislature.

recipient of the beating actually was not guilty of "leaking" the information. In some cases students stoutly maintained, after the demonstrations, that they had not received advice from any one and that Dr. Wilkerson had not instructed them as to agitation, but tests on the polygraph showed them to be telling an untruth. Conversely, polygraph tests administered to those persons describing Dr. Wilkerson's participation in the agitation and planning for the demonstrations showed such persons to be telling the truth.

PLANNING THE DEMONSTRATIONS

Although Doxey Wilkerson had been at Bishop College only since September 1959, he had made sufficient progress by the middle of the following December to preside at meetings held by the National Association for the Advancement of Colored People (NAACP) between December 18, 1959, and December 21 at Prairie View A. & M. College for the purpose of drawing up sit-in demonstrations by the students. Representatives from over 20 colleges attended, included the following: Wiley College, Bishop College, Hurd Beauty College, all from Marshall, Tex.; Texas Southern University, Houston; Huston-Tillotson College, Austin; Paul Quinn College, Waco; Butler College, Tyler; Rusk College, Rusk; Southern University, Baton Rouge, La.; Dillard College and Grambling College, Louisiana; Zillia College, New Orleans; Mississippi Vocational College, Jackson, Miss.; Tennessee Agricultural & Industrial College, Nashville; and Arkansas State College, Pine Bluff. Representation ranged from 1 or 2 individuals per school to about 20 per school. Doxey Wilkerson was 1 of the 17 representatives from Bishop College and he was introduced by Dr. S. M. Nabrit, president of the Texas Southern University. Dr. Edward B. Evans, president of Prairie View A. & M. College, agreed to allow the meeting to be held at Prairie View A. & M., but he attended only the opening ceremonies and then he left. If he did not know the purpose of the meetings and what took place in the school which he headed, he certainly should have informed himself as to such activities. Visiting students stayed in the dormitories at Prairie View A. & M. All of those present agreed to participate in the demonstrations except Prairie View A. & M. and Butler College.

Wilkerson made several talks to the students, and he and Dr. C. O. Simpkins, a Shreveport Negro dentist and president of the United Christian Movement, Inc., presided over the various meetings. Doxey Wilkerson started out by quoting a few lines of Russian poetry and then went on to impress upon the students the necessity of holding the sit-in demonstrations. Plans were drawn up to be given to each "leader" who in turn was to pass them on to his group. Each NAACP student chapter was assigned an amount of money to be appropriated for the campaign. Dr. Simpkins described plans for "passive resistance" and told the students that by going to these places and just sitting there they might not get served, but they certainly would be eliminating the owner's business, as the white people could not be served as long as the Negroes occupied the seats. Several teachers addressed the students about discrimination, racial pride, and the methods of passive or nonviolent resistance, including Robert E. Masingale, chemistry teacher at Bishop College, and A. P. Watson, president of the NAACP at Wiley College. Many students in Watson's classes were given the impression that they would not be passed if they were not members of the NAACP. Later, Dr. Curry, in defending Doxey Wilkerson as "an unfortunate victim of circumstances" was to state that the students "did not consult with any faculty member in planning their demonstration."

On January 10, 1960, Doxey Wilkerson held a meeting with the students of Wiley and Bishop Colleges and instructed them in the sit-in demonstrations. He swore all of them to secrecy and made all of those joining in the movement promise that they would not back out and would "defend until death" the "cause." Fines were established for any who might attempt to withdraw. He drew up a document outlining the rules they should follow in their every movement. Under no circumstances were they to take any action on their own initiative, but were to follow signals and directions from the "leader" assigned to each group. Whenever possible he [Doxey Wilkerson] would arrange to be present but not directly with the students so that his guidance and signals could be observed by the students without attracting attention from others. And throughout the demonstrations, large or small, a definite pattern stands out—they have all been strictly disciplined and "controlled." Ordinary student "demonstrations" which are spontaneous or voluntary or which originate with the students are usually unruly affairs which quickly evolve into wild, disorderly,

and highly individualistic behavior. But the sit-ins, in line with Communist policy have been highly organized and completely disciplined. This illustrates the theory taught by Doxey Wilkerson in the Communist-run Jefferson School for Social Science; namely, that "the struggle for Negro rights did not happen accidentally, but is a party-led effort to unite them against U.S. imperialism." [11]

Two days later Dr. C. O. Simpkins telephoned from Shreveport to A. P. Watson, president of the NAACP and a teacher at Wiley College, and they engaged in a 14-minute long-distance conversation. Numerous calls of this type took place between Simpkins and Watson and various student leaders in the demonstrations all during January, February, March, and April. Calls also went from Simpkins to Rev. F. L. Shuttlesworth, Birmingham, Ala., a director of the Southern Conference Educational Fund (SCEF); to Atlanta, Ga.; Oakland and Los Angeles, Calif.; Chicago, Ill.; and Baton Rouge, La. Also included was at least one telegram from Simpkins to James A. Dombrowski, endorsing earlier sentiments expressed by Dombrowski, executive director of the SCEF. Dombrowski is connected with a number of Communist-front organizations and was identified under oath as a former member of the Communist Party. He was head of the Southern Conference for Human Welfare (SCHW) when it was cited as subversive and was one of the early leaders of the Highlander Folk School, Monteagle, Tenn. He has been cited for subversive activities 45 times.

Telephone calls were also going from Doxey Wilkerson to points both far and near, including Louisville, Ky., New Rochelle, N.Y., Memphis, Tenn., and to the president of the Tuskegee Institute in Alabama, Dr. F. D. Patterson ,who has been listed in connection with SCEF and the National Negro Congress. Such calls between the adult leaders and the students in the Negro colleges increased in frequency and length as the scheduled time for the sit-in demonstrations neared.

THE DEMONSTRATIONS BEGIN

In February, sit-ins occurred in Waco and at scattered points across the Nation. Boycotting of chainstores in the North and East, even though they practiced no policy of segregation, was conducted by a number of national organizations to protest policies of segregated lunch counters of that particular chain in southern cities. Foremost among these organizations was CORE, the Congress of Racial Equality, sometimes known locally as the Committee of [or on] Racial Equality. This apparently well-financed organization is not only nationwide and extremely cooperative with other similar organizations, but its executive director, George M. Houser, also one of its organizers, has been active in the agitation campaign in the Union of South Africa. CORE conducts actual training schools for racial agitation and includes a number of individuals on its advisory committee who have long been active in support of Communist and Communist-front causes. It played an active part in the demonstrations in Texas as this report will show.

During the first week in March 1960, sit-in demonstrations took place in Houston. Doxey Wilkerson was granted leave from his teaching duties at Bishop College at the time the demonstrations were going on in Houston and he was identified by two witnesses as being present at Weingarten's store, 4100 Alameda, Houston, for at least 30 or 45 minutes the evening of March 4, 1960, at the time of a demonstration. The Houston demonstrations continued over a period of days, with some of the Texas Southern University students picking up their placards and signs at the rear of the YMCA in the 3500 block of Wheeler. This is the South Central Branch of the Houston YMCA, at which a leadership training conference was held by the NAACP on May 15, 1960, under the direction of Herbert L. Wright, national youth secretary of the NAACP, for the purpose of evaluating sit-ins already held and training for future demonstrations. Students attending the May conference were from Southern University, Baton Rouge; Oklahoma City University; Dillard University; Lake Charles, La.; Bishop and Wiley Colleges; Texas Southern University, Houston.

On March 4, the same day on which Wilkerson was identified as being at the scene of a demonstration in Houston, Wiley College social science instructor A. P. Watson was addressing a southwest regional conference of the NAACP in Dallas. At this meeting, Gloster B. Current, New York director of all NAACP branches, was telling his audience that the sit-in demonstrations by Negro youth in various sections of the South were all spontaneous moves and were not made with NAACP consultation. He added quickly, however, that the

[11] Report, Subversive Activities Control Board, June 30, 1955, p. 101.

group endorses and supports the protests to segregated lunch counters. Current, with at least five Communist-front activities listed, further stated: "Some of our branches in these areas have asked and obtained legal help from the NAACP."

On the following day, Roy Wilkins, executive secretary of the NAACP, and also connected with several Communist fronts, addressed a crowd of more than 1,600 persons in the Dallas Memorial Auditorium. He stated that lunch counter sit-ins by Negroes signal a new day and predicted sit-ins for Dallas. When a murmur arose from the crowd, evidently signifying that some found the sit-in method objectionable, Mr. Wilkins turned to a Negro minister on the platform and said: "What, brother, haven't these people been redeemed?" Earlier he had criticized President Eisenhower for his "lack of support" of the 1954 and 1955 U.S. Supreme Court school integration decisions. He was also critical of the Dallas School Board and its "stairstep" plan for integration, labeling it too slow. He also "lit a figurative fire" under NAACP Texas members by telling them that "after 1956 our Texas members became as meek as lambs. In fact, they were more meek than NAACP members in the State of Mississippi. I refuse to say they lost their nerve * * * let us just say they were bewildered for a time. They now seem to have snapped out of their coma * * * and the movement is underway again in good fashion." He served notice that the NAACP is weary of the "runaround" in Texas and that it will assist Negro parents in lawsuits aimed at desegregating public schools.

These remarks, of course, were in reference to the permanent injunction handed down on May 8, 1957, against the NAACP by District Judge Otis T. Dunagan, after hearings in 1956, as a result of a suit filed by former Attorney General John Ben Shepperd. The permanent injunction prohibits the NAACP from practicing law in Texas; encouraging, instigating, or financing lawsuits in which it does not have a direct interest; and soliciting or having others solicit lawsuits. The injunction also restrains the NAACP from engaging in political or lobbying activities in violaton of State laws.

Apparently speakers at the conference did not regard the injunction too seriously. Mrs. Daisy Bates of Little Rock, Ark., NAACP president, who led the school integration fight in Little Rock, evidently gave little heed to the restrictions on political activities. She reminded the audience that a Negro was among the candidates for the Dallas School Board and urged their support for him. She received one of three plaques awarded by NAACP for outstanding service, along with U. Simpson Tate of Dallas and Roscoe Dunjee of Oklahoma City. L. C. Bates, her husband, and Roscoe Dunjee are both members of the board of directors of the SCEF. Dunjee is a member of the board of directors of the NAACP and has a record of no less than 33 incidents of activity in behalf of Communist, Communist-front, and subversive activities.

The first week in March was designated Negro History Week at Wiley College and, under the order of President T. W. Cole, Sr., the students were required to attend an assembly and lecture in the auditorium every day from 12 until 1 o'clock, leaving only 30 minutes for lunch of the period ordinarily assigned from 12 to 1:30. If they did not attend, they were subject to a grade reduction. Dr. Cole later testified that he knew of no sit-ins being planned at any mass meeting of students, but Dr. Cole introduced the speakers for these lectures each day during the week and listened to them advocate sit-ins and demonstrations. After the "lecture" Dr. Cole would not comment on the subject matter directly, but would simply comment that "we have all listened to a fine deliverance" by Mr. So-and-So, or by Dr. So-and-So. The students applauded and sentiment began to grow for the sit-ins. On March 17, Dr. C. O. Simpkins spoke at Wiley College chapel service and related the story of sit-ins in other colleges in the country. This coincided with the announcement from New York of the NAACP that its members would boycott four national variety chains.

NAACP FINANCING

On Thursday, March 17, Doxey Wilkerson spoke to a meeting of both Bishop and Wiley College students and told them, "It is time to take the great step," referring to the Marshall sit-ins. But one detail was still incomplete, and that was a most important detail to the students who had been told that the immediate result of their sit-ins would be arrest and jail. That detail was sufficient funds to pay their fines and to provide bail. This had been promised by the NAACP, but it was not yet on hand. On the same day Rev. S. Y. Nixon,

State president of the NAACP, telephoned Clarence A. Laws, field secretary of the NAACP in Dallas. On Monday, 4 days later, the money was delivered—$35,000 in currency going to President T. W. Cole, Sr., at Wiley College, and approximately the same amount to Bishop College.

NAACP Regional Attorney Walter J. Durham, and NAACP Attorney C. B. Bunkley, together with Romeo Williams, sometime law partner of Bunkley and a leader in organizing the demonstrations, came to the office of President Cole at Wiley College on the morning of March 21, with $35,000 in currency in a brief case. They brought the money to be stored in the school treasury until needed for fines and bail for the students who were to be arrested in the planned sit-ins on March 26. President Cole was reluctant to be involved in the transaction and he gave the money, in the presence of Durham, Bunkley, and Williams, to Wiley Business Manager Frasier. Durham stated that a receipt had to be returned to NAACP headquarters in Philadelphia, because it came from "brotherhood headquarters" there, and Frasier gave him a receipt for the $35,000 deposited at Wiley. The attorneys explained that there would be no jail sentences, nothing more than a fine which was to be paid out of the money on hand. President Cole said he would go along if they were sure the students would not receive jail sentences and they assured him that there would be no jail sentences. They also assured him that it was planned that the fines would not be paid until htey knew they had lost the decision in Harrison County and the "higher court" had had an opportunity to pass on it. After the conference was over, President Cole invited them over to his home.

Thus the way was cleared for the Marshall sit-ins, except for the final details and working up student sentiment for them. On March 7, Ben Davis, national secretary of the Communist Party of the United States of America (CPUSA), had issued a statement demanding Federal support from our Government to Negro sit-ins. On March 6, 50 club-wielding Negroes had terrorized a white drive-in at Columbia, S.C. Out of 900 demonstrators at Montgomery, Ala., 35 students and a faculty member had been arrested on March 8. Demonstrations had been staged at Houston, Galveston, and Austin. On March 11 the NAACP had announced support of CORE and SCLC (Southern Christian Leadership Conference). On March 18, Dr. C. O. Simpkins, SCLC board member and president of the United Christian Movement, Inc., and a Negro minister, Rev. Harry Blake, SCLC secretary and fieldworker, had "guided" a meeting of Southern University students at Baton Rouge. Now the money was at hand and the stage was set.

DEMONSTRATIONS AT MARSHALL

On Monday, March 21, the same day on which the $35,000 cash was delivered to Wiley College's President Cole by NAACP attorneys, posters were first displayed on the Wiley campus. That night all male students rallied in the gymnasium at Wiley and the next morning all students met in the chapel. They went on strike and stayed on strike the remainder of that week, preceding the first sit-in on Saturday, March 26. On Tuesday 22, at 11:15 p.m., Wiley and Bishop students held a joint mass meeting at Wiley, with about 2,000 persons present, where Dr. Simpkins and the student leaders spoke advocating the sit-ins.

George Holmes, a senior student from Starkville, Miss., took over the microphone and suggested demonstrations at Marshall. To try to work the students up to the desired tempo, he talked about "Emmett Till, South Carolina, Nashville, Little Rock—things of this nature." After the demonstrations, in a newspaper interview, he was quoted as follows: "We think we've got the white in the palm of our hand—they're on the defense. We asked the judge a question today. When a man's sure of himself he knows what his answer is, you know—he's cool. The judge wasn't sure, he was nervous." Holmes continued, "With 52 percent of the county's population, we have everything in our hands."

Hundreds of pamphlets went out on the Wiley and Bishop campuses during that week. One was "How To Practice Non-violence," published by the Fellowship of Reconciliation (FOR), and another was "11 Commandments," written by James M. Lawson, who had been ordered to leave the Divinity School of Vanderbilt University on March 3, due to his activities as an organizer of sit-ins. This sheet not only shows the strict discipline under which the sit-ins were planned, but clearly indicates that the so-called "nonviolent protest" was calculated to provoke violence whereby the demonstrator could assume the role of a martyr.

Typical of the attitude which has been induced among many students was the statement by Albert Campbell, 27-year-old religion and philosophy senior at Bishop College and president of the student center there, whose home is in Philadelphia. He stated that the students "were not concerned with violence" when they walked into the store, but "anyway, they were prepared to die." Another student said that if there was any violence it would not be the fault of the students, since the demonstrations were based on "Rev. Martin Luther King's passive violence—I mean, passive resistance."

Rev. Martin Luther King, Negro president of the SLLC, member of the National Advisory Committee of CORE, leader of the Montgomery boycott, leader of the march on Washington with his manager, Bayard Rustin, and also a member of the national committee of the American Committee on Africa, and longtime racial agitator, was regarded as their leader and idol by many of the Marshall student demonstrators. Dr. C. O. Simpkins was widely accepted as King's "emissary" and representative. In the "11 Commandments" sheet the teachings of Christ, Gandhi, and Martin Luther King, Jr., are equated.

But talk of violence was deliberately continued by some of the leaders, including Roosevelt Peabody, of East St. Louis, Ill., and Joel Rucker, from Bakersfield, Calif. Rucker stated: "The flame is up, the flame is up. The whole town is on fire. We were the spark and now the flame has started. We will go all the way, if it requires death, all the way."

Those students at the colleges who openly opposed the proposed demonstrations were subjected to extreme pressure to join the demonstrations or, failing that, to keep quiet about their opposite opinions. George Holmes stated that those in opposition were told: "You gotta go along with the program. You can't say 'I'm not going.' You're a Negro, you got to go with us." One girl who had held back was badgered for her reluctance until she succumbed and ended up singing in a demonstration. Thus was the weapon of group pressure used to make student participation more widespread.

It was also planned to attempt to place the law enforcement officers in situations where the demonstrators could charge "strongarm" tactics on the part of the officers or the store owner. The students were instructed by their leaders to be alert for any "roughness, hostility, or verbal abuse" by police officers. In such cases they were to be sure to get the officer's badge number for use in "reporting it to the FBI."

A pseudoreligious atmosphere was added in commandments Nos. 10 and 11, and some students were actually led to feel that this was divinely inspired.

The sheet read as follows:

"These Are the 11 Commandments Presented by Rev. James M. Lawson, Divinity Student at Vanderbilt University, To Guide Southern Students in Nonviolent Protest

"1. Don't Strike Back or Curse Back if Abused.
"2. Don't Laugh Out.
"3. Don't Hold Conversations With Floor Workers.
"4. Don't Leave Your Seats Until Your Leaders Have Given You Instructions To Do So.
"5. Don't Block Entrances to the Stores and Aisles.
"6. Show Yourself Friendly and Courteous at All Times.
"7. Sit Straight and Always Face the Counter.
"8. Report All Serious Incidents to Your Leader.
"9. Refer All Information to Your Leader in a Polite Manner.
"10. Remember the Teachings of Jesus Christ, Mohandes K. Gandhi [sic] and Martin Luther King, Jr.
"11. Remember Love and Nonviolence, and May God Bless Each of You.

"We Are Adding One More for Wiley and Bishop Students

"Dress Neatly and Act Intelligently."

Another sheet, urging boycotts, read as follows:

"Steps Toward Equality

"1. Why pay for segregation?
"2. If you can't eat, don't buy!
"3. You have been treated like second-class citizens too long. Join in the fight and be a first-class American.

"4. The door of segregation is closing. Let's work together to close it.
"5. Together we stand—divided we fall.
"6. Pave the way for your children and your children's children.
"7. Don't be a coward—stand for your rights.
"8. Be proud of this student movement for we are your sons and daughters.
"9. Men were against Christ but God was with Him and He triumphanted [sic].
"10. Remember the laws of passive resistance: Nonviolence.
"11. God is our Leader. Won't you join us? With God how can we fail?
"I will not spend my money where I can't eat: Woolworth, Rexall Druggist, Union Bus Terminal. I can eat but it's segregated so I won't buy."

Those students who agreed to take part in the sit-ins were not only schooled but were "drilled" in the correct technique for "sitting in" at lunch counters. They practiced playing out the roles, some taking the roles of "nonviolent" students passively sitting at the lunch counters enduring abuse, while other Negro students took the roles of violent, white owners, officers, and citizens. Those playing the white roles then deliberately abused the sit-in "actors" by slapping and shoving them, spitting in their faces and cursing them. The idea was to stifle any impulse to fight back until and unless the signal was given by the leader. (Later they publicly denied they had any "leaders" or "instruction," claiming they had only "spokesmen" and "advice.") This drilling went on for a week at both Wiley and Bishop. Studies were laid aside and forgotten.

Some students who "couldn't take it" in the opinion of the leaders were made to stay on the campus and out of the direct participation in the sit-ins. One sudent from Nigeria, West Africa, frankly believed in direct action and said that in view of Johannesburg he hated all Caucasians, 100 percent. He recommended violence and said he was going to carry his tribal black knife with him and use it to advantage. The leaders promptly ordered him to stay on the campus for fear he would hurt their plans. But as one of the leaders, who participated actively, expressed it, even passive resistance has its limitations; if their white adversaries got them down and kicked them, then that would be "mob action," and passive resistance and nonviolence would be replaced by active resistance.

The students were lectured about Gandhi, discrimination, and alleged abuses in South Africa.

When some of the leaders suspicioned that a "tipoff" had been made to white persons about their plans for a sit-in on Saturday the 26th, they arranged a "decoy" by having one of their members make anonymous calls to the newspaper and radio stations and Woolworth's, saying they planned to stage a sit-in on Monday. This was done in order to maintain the advantage of a surprise approach on Saturday morning. They began to fear that their telephone lines were tapped because "white people run the telephone company," so the students arranged to meet personally to draw up final plans. However, the long-distance calls between the real leaders, the Negro adults involved, including Doxey Wilkerson, Dr. C. O. Simpkins, A. P. Watson, Harry Blake, S. Y. Nixon, Clarence Laws, etc., not only continued but increased.

On Thursday, March 24, a mass meeting was held at Wiley College, and Harry Blake, from Shreveport, attended. After the meeting Blake met with 43 students pledged to stage sit-ins on the 26th, planned details of the sit-ins and he again laid down the rules they would follow. On March 25 several male students roughed up the Negro principal of Pemberton High School in Marshall because they thought he had tipped off the local police concerning the sit-ins which were scheduled to start the next day at 10 a.m.

On Saturday morning, March 26, Doxey Wilkerson brought some of the students to the demonstration area in his car and put them out at the Palace Drug Store, telling them to give him 10 minutes to get over to Woolworth's where the sit-in was to be staged. At the appointed time he joined nine Negro students from Wiley and Bishop Colleges, who had entered Woolworth's in pairs from different directions, but he remained at a distance from them. At a given signal the nine all sat down simultaneously. Witnesses stated that Wilkerson apparently was giving signals to the leader of the student group with his pipe and prearranged signals. Later he claimed he just happened to be in the store by "coincidence" at the same time as the sit-in demonstration, but the official report of the incident at the time states that the demonstration was led by D. A. Wilkerson, Negro professor, Bishop College. The Woolworth store manager had been notified on the afternoon of Friday, March 25, by an unknown Negro that the demonstration was planned for Monday, March 28.

After the sit-in began, the manager ordered the store closed to all customers at 10:20 a.m. and all customers, including the demonstrators, left. The store was reopened to customers at 12:30 p.m., but the lunch counter remained closed and was still closed when several demonstrators again appeared at Woolworth's about 3 p.m. Near the same time demonstrators also appeared at the bus terminal lunch counter but found it already closed. These demonstrations continued at various locations in Marshall throughout the following week, amid mounting tension and increasing crowds.

CORE, FOR, and American Friends Service Committee (AFSC) pledged support and cooperation with the Southwide Youth Leadership Conference and SCLC in support of its sit-in demonstrations. CORE announced that 25,000 leaflets were being distributed urging boycotts. Demonstrations were staged in Harlem by the Committee To Defend Martin Luther King, the New York NAACP, and the National Student Association.

On Wednesday, March 30, Romeo Williams told the authorities that he had helped organize the demonstrations. He stated that more sitdowns were planned, but that none could be held on Thursday, March 31, and true to his prediction, none occurred. He also said that assistance in procuring money for bonds or fines "will be provided" by NAACP. Of course, only 9 days earlier he had been with the two NAACP attorneys, W. J. Durham and C. B. Bunkley, when they had carried $35,000 in cash into the president's office at Wiley College, so he certainly was well aware of the status of the financial backing, and that the money had already been provided by the NAACP before any demonstrations ever occurred in Marshall. NAACP Attorney Bunkley appeared openly now as legal counsel for the demonstrators, stating that he was not representing the NAACP but had come at the request contained in "a letter from Negro students." No specific student was ever named as the writer of the "letter" nor was Bunkley's activity prior to the demonstrations revealed publicly.

It was also on March 30, after repeated attempts by the authorities to break up the demonstrations and disorder, and to prevent violence, that hundreds of Negroes gathered in a mass meeting on the courthouse lawn in Marshall. When they refused to obey orders to disperse, authorities were forced to use firehoses to break up the crowds and a number of students were arrested.

The next day a boycott against Marshall merchants was ordered by student leaders. Many merchants agreed that business was seriously harmed, in some instances being less than 50 percent of its normal volume. Relations between the two races in Harrison County had been harmonious for years and most of the local Negro residents were not in sympathy with the demonstrators, whose student leaders were almost entirely nonlocal. But the harm to normal business activities was brought about by several factors besides the boycotts, including the enforced closings of the places chosen for demonstrations, the fear of the sudden eruption of large-scale violence in the downtown and campus areas, and the general tension created between the races. This deliberately built-up tension, of course, is part of the general Communist design for mass agitation in countries under non-Communist governments. As FBI Director J. Edgar Hoover comments in his book, "Masters of Deceit":

Page 194: "The controversy on integration has given the Communists a field day."

Page 197: "Communism has something to sell everybody. And, following this principle, it is the function of mass agitation to exploit all the grievances, hopes, aspirations, prejudices, fears and ideals of all the special groups that make up our society, religious, economic, racial, political * * * Stir them up * * * Set one against the other. Divide and conquer. That's the way to soften up a democracy."

COMMUNIST SUPPORT

On the following weekend, April 2 and 3, the national committee of SPUSA was meeting in Chicago and received reports from Benjamin Davis and Claude Lightfoot on the development "of the Negro people's movement." Naturally, they did not acknowledge having stirred up most of the agitation, but once it was underway, they assumed the self-righteous position of supporting a poor, oppressed minority against Gestapo-like police action. James Jackson, editor of the Communist newspaper, the Worker, pledged international solidarity action in support of the South African resistance movement. This movement has been supported by the American Committee on Africa, which lists Martin Luther King as a member of its national committee.

George Houser, one of the organizers of CORE, which he served for 10 years as executive secretary and later as national chairman, was also one of the organizers of the American Committee on Africa, as well as Americans for South African Resistance. He directed the latter's group activities in raising money and otherwise supporting the nonviolent resistance campaign of the African National Congress in the Union of South Africa. The appendix contains more detailed information concerning CORE. These facts are cited here to point out that the conspiracy behind the sit-ins and racial agitation exists not only on a national scale but reaches straight to Africa and Russia.

Jackie Robinson, while picketing a chainstore in Cleveland, Ohio, in support of southern sit-in demonstrations, made the following threat: "We are going to cause trouble until we get equal opportunities. What has happened in South Korea can happen in south Alabama or on the south shore of Lake Erie." Robinson had just concluded an address to about 700 persons at a luncheon sponsored by the NAACP, during which he criticized former President Eisenhower for urging patience in the race issues. And there has been an increasing effort on the part of many Negro agitators to tie together in the minds of their audiences any racial disturbance in the United States and antiwhite activities which recently beset various parts of Africa.

Following the Chicago meeting of the national committee of the CPUSA, the Communist newspaper, the Worker, again came out with editorial support of sit-in demonstrations, and James E. Jackson, Worker editor, made a speech praising them.

At the same time, various legal authorities such as District Judge A. R. Stout were pointing out that massed, planned sitdowns are illegal and constitute trespass. Judge Stout asserted in an address before the Travis County Bar Association that such mass action violates longstanding legal authority which allows the proprietor of a theater, restaurant, or similar establishment to refuse admission to anyone. He pointed out that a theater operator can forcibly eject a customer, even after selling him a ticket, if he refuses to leave upon request and refund.

DEMONSTRATIONS CONTINUE

But the demonstrations continued, although in Marshall the students began entering demonstration areas by twos in an attempt to avoid unlawful assembly laws. Thurgood Marshall, chief counsel of the NAACP, stated before an interracial audience of over 4,000 persons at Fisk University on April 6 that the whole force of the NAACP was behind the Negro sit-in demonstrations. "This is not just a protest to the get a hamburger and a cup of coffee; both sides know it," he said. "It is a protest against the whole vicious system of segregation in the South which is aided and abetted by the North and condoned by the Federal Government." CORE held demonstrations at Los Angeles and Portland and called for nationwide picketing of Woolworth stores. This was carried out in various places, including the store on Herald Square in New York City.

On April 10, CORE presented on the Chet Huntley TV program a training film on how to conduct a sit-in demonstration. Some of the Negro participants assumed the role of supposed white tormentors and proceeded to heap extreme physical and verbal abuse on those Negroes play-acting the role of the "sit-inners." Then the instructor pointed out any errors he felt the participants had made in their behavior and what they should do to correct them. This was similar to the training and drilling sessions conducted at Wiley and Bishop Colleges before the demonstrations were started there.

The demonstrations in Marshall, in line with Communist objectives, did a great deal to create not only disrespect for law and order among Negro students but actual antagonism and hatred toward law enforcement officials, personally and in general. This is clearly revealed in the account of alleged incidents in the courtroom given by some participants following their arrest. George Holmes told of how students, who had been furnished Bibles as part of their "equipment," began to read aloud from them in the courtroom. Roosevelt Peabody read, "Of whom shall I be afraid?" and Hattie Jean Whittenburg, a Wiley student from Oklahoma City, was reading: "Deliver me, O Lord, from evil men; preserve me from violent men," when an officer stopped her, telling her that if she wanted to read she should read to herself and not out loud.

Then the students began to sing "loudly and diligently" according to Holmes, "Glory, Glory, Hallelujah" (presumably he meant the "Battle-Hymn of the Republic" by Julia Ward Howe) and the "Star-Spangled Banner," during which

he continued, "the cops sat back with cigarettes, feet up, and stood talking like it was just nothing. I think it was a disgrace. If I were God I'd slap their brains out, you know." This singing of patriotic songs under the circumstances was certainly prophetic of the singing during the Communist-inspired riots the following month in the city hall at San Francisco during the HCUA hearings.

DOXEY WILKERSON CONTINUES OPERATIONS

In the meantime, what happened to Doxey Wilkerson after he refused to resign and was reluctantly dismissed by President M. K. Curry? On April 8, nearly 2 weeks after Doxey Wilkerson had been named in official reports and in newspaper accounts as the leader of the first sit-in in Marshall, Dr. Curry was still defending him and maintaining that he had had nothing to do with the instigation of the demonstrations. He took this stand despite the fact that dozens of the students from both Bishop and Wiley Colleges had met in secret sessions with Doxey Wilkerson and many knew that he was directing the planning. On April 8, Dr. Curry joined with Dr. W. R. White, chairman of the board of trustees of Bishop College and also then president of Baylor University, in a public statement aimed at reassuring prospective white donors to a fund drive for moving Bishop College from Marshall to Dallas. Dr. Curry referred to the sit-ins as a "phenomenon * * * which will soon pass." He again praised Dr. Wilkerson and said that since Bishop College was a Christian institution, they thought Wilkerson should have an "opportunity." In Dr. Curry's annual report to the board of trustees on May 10, 1960, he again praised Dr. Wilkerson and stated that he was forced to "resign under strong pressure of certain vested-interest groups." It is not known to what vested interests he referred unless it was to the white citizens of Dallas who were being asked to contribute $1 million to Bishop College in order to move it from Marshall to Dallas. He states that an "effort" was made to link Mr. Yolanda Wilkerson with the Communist movement. Her connection with the Communist movement and as a member of the Communist Party had been fairly well established years before in sworn testimony before various U.S. Government agencies. He castigates a "prejudiced press [which] was determined to play this note—communism—until the people were whipped up into a frenzy * * *."

After Doxey Wilkerson was dismissed from Bishop College, his name dropped out of the newspaper columns but he by no means dropped out of his lifelong participation in stirring up racial agitation. His wife, Yolanda Wilkerson, continued to teach at Bishop College while he made one or more trips to Eastern and Southeastern States before the youth leadership meeting at Shaw University, Raleigh, N.C. At this conference called by SCLC, plans were laid for future sit-in demonstrations and a temporary organization was set up to coordinate these efforts. In recognition of their sit-in leadership, both Dr. C. O. Simpkins and Harry Blake were invited to this meeting as representatives for the Shreveport area. On April 19 a meeting was held at the office of Dr. Simpkins in Shreveport to report on the Raleigh meeting and several others held in the Southeastern States, and to instruct students from Southern University, Baton Rouge, and Wiley College, and residents of Shreveport in plans for a sit-in in the library in Shreveport. Jo-Ann Morris and Yvonne Morris, relatives of Dr. Simpkins, who were known as sit-in leaders, told of the meeting in Tennessee which they had attended and demonstrated how to hold a sit-in, as they had done at Baton Rouge. They were given legal advice to the effect that no charge would be filed against them except disorderly conduct and, in that case, they were to ask the judge what was wrong with them, were their clothes dirty, their English bad, or what?

Dr. Simpkins stated that he was making arrangements to have some witnesses planted at the scene and the attorney would be waiting at the police station to post bond for each person arrested. They were even told the names of the books for which they were to look at the library, including "Autobiography of Mohandas K. Gandhi," the "Life of Mahatma Gandhi," "Stride Toward Freedom," by Rev. Martin Luther King, and "How To Practice Nonviolence."

A warning was issued by Dr. Simpkins that the meeting was very secret and that no one outside the meeting was to know about it or there would be trouble.

On April 21 another meeting was held at the office of Dr. Simpkins, where Dr. Simpkins introduced Dr. Doxey Wilkerson as a very distinguished guest, a "well-known man who has helped Negroes throughout the country." He told them that Wilkerson was a Communist.

Wilkerson addressed the students, saying "I am from Texas and in charge of the sit-ins, and I am going to tell you about what to expect." He said he was in charge of the sit-ins in Marshall and the police came looking for him but he was outside in a car, following which he went to Longview and then back to Shreveport. He stated that he couldn't return home because the police were looking for him there, but the students could reach him through Dr. Simpkins if they needed him.

Wilkerson pledged complete support of the United Freedom Workers "all the way." He told the students in detail what to do at the time of the sit-in, stating that he would be present at the sit-in, with Dr. Simpkins, but would try not to be seen by anyone who might know his face. He gave them a list of books to look for and told then that if the library said they could not take out a book, they should just sit in the library and read. He stated that they should be very quiet and have no disorderly conduct. Wilkerson instructed the students to ignore the police officers when they arrived at the scene of the sit-ins and when the officers told the demonstrators to get up they were not to obey, but were to keep their seats until the policemen told them that they were under arrest. Then, Wilkerson said, they were to ask: "What is the charge?" Wilkerson stated that the charge would be disturbing the peace or disorderly conduct. Then they were to return their books to the shelf and report to the officer, ready to go to jail.

Dr. Simpkins stated that a white man in Shreveport, whom Simpkins identified as "a Communist," works with Wilkerson, and that he and Wilkerson "are meeting him in Mississippi." Simpkins further said that he had a close friend who notified him of any plans the police officers might have to "move in," so if the police made a move he would know about it. Simpkins said he had worked on this man's teeth and they were very good friends.

According to Simpkins, the SCLC meeting at Raleigh on "nonviolent resistance" which was held April 15–17, 1960, under the guidance of its president, Rev. Martin Luther King, Jr., and its executive director, Miss Ella Baker, sent word by him, a member of the executive board, that "we are behind you all the way." Dr. Simpkins' 16-year-old son had accompanied him to the meeting in Raleigh.

Wilkerson again spoke up, saying: "I am behind you and anytime you need me, I'll be here. I can't tell you how I'll get here—someone in this meeting will know how to get in touch with me. I will be here for the sit-in, but I'll not be seen—I'll not be visible. I will be in the back seat of Dr. Simpkins' car."

Doxey Wilkerson further instructed the students that no one was to leave the jail unless all were bailed out; that they should go prepared to stay in jail overnight if the police held them on an open charge. Arrangements were made for Dr. Simpkins and Dr. Wilkerson to meet with the attorney, following the meeting with the students and officers of the Freedom Workers, which meeting closed shortly after noon.

The meeting place on the following day was changed from Dr. Simpkins' office to the pastor's study at the Galilee Baptist Church due to the fact that a patrol car officer, parked near Dr. Simpkins' office, had already stopped a student leaving the meeting the day before and questioned the student. Also, a change in attorney's was announced with the statement Attorney Stone would be used because he was on the payroll of the NAACP.

Final plans were made at the meeting on April 27, including arranging for the "bystanders" who were to serve as witnesses. Dr. Simpkins ordered Jo-Ann Morris to be on Edwards Street to write notes regarding the meeting so that Dr. Simpkins' wife could print some leaflets on the sit-ins. Yvonne Morris stated that Dr. Doxey Wilkerson was staying with Reverend Jones, 812 Butler Street, Shreveport.

On Sunday, May 1, following the sit-ins and the courtroom appearances, a meeting was held in Allendale with Doxey Wilkerson, C. O. Simpkins, all the officers of the United Christian Movement, a Negro minister, a Negro doctor, and two white men from Shreveport. They discussed plans to bring Rev. Martin Luther King to speak to the United Freedom Fighters and the planned appearance of a white girl from Centenary College to speak before an interracial meeting at the St. Paul C.M.E. Church on Friday, May 6. It was announced that Dr. E. E. Allen, Negro dentist of Shreveport, had given the United Christian Movement a large sum of money to help the four students fight their cases.

The interracial meeting on May 6 at the St. Paul C.M.E. Church was called off after a number of people had appeared, including the members of the Freedom Fighters, and a few from the United Christian Movement and several Negro teachers. The Reverend Smith stated that the meeting was being called off

because of a bomb scare. Rev. W. S. P. Norris announced that "Miss Nelson," a white student from Centenary College, had been scheduled to speak on her all-out belief in integration, but that she was not going to appear that night because so many police cars and reporters were in the area. However, he said, she was going to talk to the student body of Centenary College and tell them how it feels to mix and serve with the Negro race and how she believed in it. He urged that they give her all the support she wanted.

The United Christian Movement, Inc., held a mass meeting at 7:30 p.m., on May 9, 1960, at the 13th District Auditorium in Shreveport, with about 900 persons present. The Reverend W. S. P. Norris presided, referring to Dr. Simpkins as "another Moses, a man of courage, a leader who had opened the door." Simpkins outlined campaigns conducted by the UCM and encounters he had had with the police department, stating that he had had "all of them looking like fools." He stated that, "We, the people, are now going forward. * * * We must show the whites who and how powerful we are."

Ella J. Baker, Negro executive director of the SCLC, was now another speaker on the program. Before her affiliation with SCLC, Miss Baker had a long record of activity with the NAACP, having served as director of the branches, president of the New York branches, and a member of the executive committee for the New York branch, between 1942 and 1957. She acted as chairman for a mass meeting protesting police brutality which was sponsored by NAACP in New York City and as spokesman for pickets at City Hall, New York, on September 19, 1957, concerning discrimination in the public schools. She is also credited with organizing the Africa Freedom Dinner, honoring Mr. Tom Mboya, president of the Nairobi Peoples' Convention, Kenya, Africa, held at Atlanta University, in May 1959.

Miss Baker expressed the regret of Rev. Martin Luther King for his not being able to attend the UCM meeting, but said he had asked her to tell all of them that he would be in Shreveport within a month to work with Dr. Simpkins again. Ella Baker said she had worked with Simpkins and Blake several times before. She was the houseguest of Dr. Simpkins. She discussed the bus boycott and the sit-ins across the country.

Jo-Ann Morris, leader of the Baton Rouge sit-ins, described her stay in jail and she "took what a southern judge can give and still had a smile on her face."

Gladys Russell made a brief talk, saying that, "We, the people, are not to be pushed around any more by the so-called whites." She emphasized that "We, the people, must take what is ours and not let the whites stop us from doing the things we want to do—now or later. We must fight all the way."

The happenings in Louisiana are touched upon here to demonstrate that the forces behind this conspiracy observe no city, State, or even national boundaries. Despite the outcry that all sit-ins were "spontaneous," quite the contrary is evident. They are highly organized and carefully planned. Strategy, both physical and financial, locale, and vulnerability are thoroughly premeditated.

A sinister radicalism is being injected into the very fiber of the multitude of students, the majority of whom do not even realize how they are being used by clever subversives. The trust and respect which had been increasing between the two races for over 80 years is being obliterated by agitators. The plan calls for fomenting class warfare in America as a prelude to conquest.

A study of official records of those Government agencies investigating communism in the United States shows that a large majority of those Negroes and their white allies who are active in agitating racial unrest have also been extremely active in advancing the cause of communism. Many investigating agencies hesitate to call Negro agitators for questioning under oath or even to publicly identify them with a record of their subversion, because of the political consequences which are almost inevitably a charge of "Negro persecution." The charge of "anti-Negro bias" or "discrimination" effectively silences most such investigations. Many thoughtful, intelligent Negro leaders realize that only through full exposure of the subversive elements in racial agitation, will their race be saved from the disaster toward which Communist elements are leading it.

But, invariably, when such Negro leaders counsel their own people to better their situation by personal effort and improvement and by the natural advancement which comes with harmonious relations, and to avoid alliances with persons and organizations advocating hasty compulsion, such wise leaders are promptly labeled as "Booker T. Washingtons" and accused of "Uncle Tomism."

Also, many agitators, both Negro and white, proceed along the road of racial agitation because they find it personally profitable. The Communist Party gives

to those considered useful the "red carpet" treatment, including invitations to predominantly white functions, liquor, and a selected group of white women, dedicated Communists, trained for this phase of Communist activity. Among those considered most useful are listed Negro entertainers, artists, university professors, editors, sports figures, labor leaders, and key officers in Negro organizations. Once won over, these Negroes are then used, knowingly or unknowingly, to entice the "Negro masses" into action useful to Communist aims.

Following the violence at Little Rock involving Daisy Bates, NAACP leader, and the integration of the high school there, the NAACP had the "greatest financial year in its history," according to Roy Wilkins. Membership also rose, just as did Communist Party membership after the riot at the San Francisco City Hall.

Furthermore, many Negro leftists find it amazingly easy to attend various universities on grants from foundations set up by white philanthropists, but which have now come under the control of extreme leftwingers and subversives. Many leading Negro agitators, both here and in Africa, have lived their entire adult lives on the largess of white philanthropists and leftists, and as a result have no real conception of the problems of any workingman, either Negro or white, since they have never actually been faced with supporting themselves. But this does not prevent them from mounting their soapboxes to tell their "fellow Negroes" how oppressed they are and how to remedy it.

SUBVERSIVE INFLUENCE IN EDUCATIONAL PROCESS

Mr. Richard E. Combs, chief counsel for the California Senate Committee on Un-American Activities, testified before the U.S. Senate Internal Security Subcommittee, on March 19, 1953, in a hearing on "Subversive Influence in the Educational Process." Dr. Robert Morris, chief counsel for the subcommittee, questioned Mr. Combs about the use of Communist-front organizations to thwart the work of the California legislative inquiry. Mr. Combs named several which had been used to infiltrate thee educational process, including the Committee for a Democratic Far-Eastern Policy, cited as Communist, which included Doxey Wilkerson among its sponsors.[16] The following testimony is given on page 619 of the hearings:

"Senator HERMAN WELKER. Mr. Combs, from your vast experience going over the past 14 years, would you say that a Communist would be a competent and effective teacher in an American school without spreading propaganda to students?

"Mr. COMBS. Senator, there is no such thing as a dormant or inactive Communist. I have never heard of one. A Communist is a person fanatically dedicated to an international conspiracy, who is bound by ties of ironclad discipline. There is no such thing as an isolated single Communist. He is mandated by his superior, usually his unit organizer, to get in contact with other Communists, whether it is a trade school or union or university or whatever it is, and from a little cell, and they in turn form other cells and others and others.

"There is no such thing as an inactive, dormant Communist. It would be utterly impossible for a university professor or a teacher to be a Communist and at the same time not endeavor to indoctrinate others, to reorient courses to carry out the party line, and to do everything in his or her power to further the Communist conspiracy. That is one thing of which we are utterly convinced.

"Senator WELKER. Mr. Combs, what has been your experience with respect to the claim that a Communist teacher should only be evaluated with respect to his professional subject; in other words, you should not inquire about his political beliefs, but you should inquire only as to his ability to teach science or mathematics or some subject such as that? * * * Can you segregate him and evaluate him in that manner?

"Mr. COMBS. It is impossible, Senator. He can't be evaluated that way. He may be evaluated as one of the most eminent authorities in his field that there is internationally. If he at the same time is a member of the Communist Party, he will do everything in his power to use that position of eminence and prestige to further the Communist program."

On March 25, 1953, during the same hearing and 1 day after Doxey Wilkerson had repeatedly taken the fifth amendment under questioning, testimony was heard from Dr. William Jansen, superintendent of schools, New York City,

[16] Fourth Report, California Senate Fact Finding Committee on Un-American Activities, p. 208.

concerning the Communist teachers removed from the New York schools. Senator William E. Jenner asked him if he believed that a Communist could be a good teacher and Dr. Jensen stated that he believed that a Communist should not teach in the schools of the United States, based on the four criteria which he found useful in judging a teacher; namely: (1) loyalty to the country—a Communist is disloyal in advocating the violent overthrow of the Government; and, although he may be an American citizen, as a Communist his allegiance is to the Communist foreign power; (2) scholarship and teaching method—a teacher cannot have scholarship if he is circumscribed by party discipline or party lines of communism; (3) love of children and respect for the individual—under communism, the state is supreme, the individual does not count, and children are asked to testify against their own parents; (4) high ethical standards—impossible under the Communist organization which definitely advocates lying if it will accomplish the Communist purpose.

Dr. Jansen testified that he felt that "academic freedom" is freedom to search for the truth and that, as such, it had been helped rather than hurt by removal of Communists from the New York schools, since there is no freedom if you must follow the party line or follow a party discipline. Dr. Jansen also stated that the skill of a Communist teacher, in party standards, is measured by his ability to disguise his indoctrination in the classroom, and that such teachers extend their activities far beyond the classroom. He stated that in many of the parent-teacher groups there were evidences of infiltration by the Communists. He indicated that willingness on the part of an ex-Communist to cooperate with the school authorities and give them the names of individuals who were in the same Communist cell with the former Communist was a help in deciding whether that person's "renunciation" of Communist Party membership was sincere or not.

Senator Welker read several recommendations made by the Internal Security Subcommittee and asked for Dr. Jansen's observations concerning them. One was to the effect that school authorities, colleges, and local boards of education institute positive programs, not under the direction of Communists or Communist sympathizers, to teach both teachers and school pupils the nature of the Communist conspiracy that is attacking the whole structure of our society. Another recommended that State legislatures give consideration to undertaking investigations such as that made by the New York State Legislative Committee of 1939–42, the Rapp-Coudert committee. Dr. Jansen agreed and added that someone outside of the schools themselves ought to conduct such investigations, because schools usually haven't the facilities for such investigations.

"The Findings of Fact and Declaration of Policy With Respect to Membership in the Communist Party," as amended by the New York Board of Education, was put into the Subcommittee records by Superintendent Jansen and a pertinent portion follows, from page 659 of the hearings.

"The conclusion is now inescapable that the Communist Party in the United States is and has been dedicated to the advocacy of the overthrow of our Government by force and violence. Based upon such conclusion, it is the announced policy of the board of education that a teacher or other employee who is a member of the Communist Party or of a group advocating the overthrow of the Government by force and violence is not qualified to continue in the school system. Past membership in the Communist Party, or in a group advocating the overthrow of the Government by force and violence, may establish present membership in the absence of a showing that such membership has been terminated in good faith. Even if it does not so establish present membership, past membership may be taken into account with other circumstances of the individual case in considering whether a teacher or other employee is disqualified.

"Entirely relevant to a teacher's fitness for continued employment is the question of whether or not that teacher is now or has ever engaged in an illegal act or conspiracy. Where substantial reason exists to believe that a teacher is or has engaged in such activity, it is the duty of the superintendent, and, at his directive, any person in the employ of the board of education, to inquire as to such participation and the extent thereof."

In his pamphlet, "The People Versus Segregated Schools," published in 1955, Doxey Wilkerson strikes back at Dr. Jansen in a typically communistic way by describing him as a "bigot." On the next page he has high praise for Dr. Lee Lorch, Carl Braden, and Anne Braden, all identified as Communist Party members and all connected with SCEF. Wilkerson's pamphlet follows the Communist Party line throughout, and in urging "more powerful mass pressures by the Negro people," it frankly makes the following statement:

"The legal issue before the Supreme Court was the same in 1954 as in 1896, when, in the *Plessy* v. *Ferguson* case, the Court nullified the 14th amendment. But the political situation was entirely different. This, what the earlier Court could do with white-supremacist arrogance, the present Court could not do at all. It had to bow to the demands of the Negro people * * *."

Thus does an admitted Communist boast openly of what has been done to the highest court in our land through the use of agitation to arouse "pressure."

AGITATORS IN WHITE COLLEGES

Just as racial agitation and those subversives who further it are not limited by geography, neither are they limited to Negro colleges only. Agitation has flared at the University of Texas, and even more recently both Negro and white residents in Austin engaged in demonstrations at the box office of a theater near the campus of the University of Texas.

A prime example of such a "roving agitator" appeared at Dallas just before Easter Sunday, 1960, in the person of Rev. Ashton Bryan Jones. Reverend Jones' appearance in Dallas coincided exactly with the beginning of the special youth leadership meeting on nonviolent resistance to segregation, which was held at Shaw University, Raleigh, N.C., and which was called by Martin Luther King and Ella Baker, president and director of the SCLC. This conference was supported by CORE, FOR, MIA, Freedom Fighters, the Raleigh Citizens Association, and other groups which had been backing sit-in demonstrations across the country.

The committee realizes that there are so many channels and cross-currents involved in the conspiracy behind this agitation that it is extremely difficult to draw a complete picture and list every interconnection in a report as limited as this one unavoidably had to be without a hearing. The committee has a great deal more information in its files than could be included and, like the visible part of an iceberg, even that additional information is still only a small portion of the total conspiracy.

The Communist Party depends for its success upon concealing much of its operations and upon channeling many of its activities through organizations which it has infiltrated and which bear "respectability."

The integration of a few lunch counters, or even every lunch counter in this country, certainly is not the ultimate objective. However, if any part of the free-enterprise system is weakened or destroyed in the process of sit-ins and boycotts, then the cause of socialism is just that much further advanced.

The CPUSA objective is to create dissension; to harass enforcement officers and place them in embarrassing positions to create disrespect for law and enforcement personnel.

Nonviolence, however, is a misnomer. The participants engage in activities expecting violence as a result of their action. Actually, they seek violence to achieve publicity and martyrdom. Decision of which laws to obey and which to defy cannot be left to each individual concept of law. Defiance of law and order can result only in chaos.

VIOLATIONS OF PERMANENT INJUNCTIONS OF DISTRICT COURT OF SMITH COUNTY AGAINST NAACP

Violation of the permanent injunction of the district court of Smith County against the NAACP not only is clearly established, but such violations have been so flagrant and highly publicized that it would appear that those officials charged with protecting the rights of the people of Texas would have become aware of these violations and challenged the unlawful activities of the NAACP.

Some of this newspaper publicity is listed herewith.

February 10–11, 1960, Dallas and Fort Worth newspapers: "Two Negro Fathers Admit NAACP Legal Financing." Weirleis Flax, Sr., and Herbert C. Teal, Sr., stated in sworn depositions that the NAACP was supplying finances for their suit to force integration of Fort Worth public schools. Both declared they approached Dr. G. D. Flemmings, a Negro dentist, who is president of the Fort Worth chapter of the NAACP and asked for aid.

Flemmings agreed, and their next contact was with L. Clifford Davis, local counsel for the NAACP. His name and those of Thurgood Marshall, national NAACP attorney, and W. J. Durham, regional NAACP attorney, appear in the suit. Teal declared he paid Davis a sum he could not recall, signed a note for around $700, and was told the NAACP would pay the rest of the expenses of the suit.

In the deposition Sergeant Flax made it clear that his contacts were with the NAACP and not on a basis of client-personal attorney. He stated that he was required to make formal, written application for aid to the "president" of the NAACP and that Mr. Davis provided the necessary form for him to sign. He further stated that he did not know how much money had been provided for prosecution of the case, but the "president" would probably know. He had not known Flemmings prior to the beginning of the legal action.

Teal stated that he had known Flemmings in the NAACP, but had never met Durham until the day the deposition was taken and had never met Thurgood Marshall at all. He explained the presence of the names of two lawyers, whom he had never met, on his petition, by saying that he guessed it was the help that Mr. Davis promised that he would probably need to carry out the work in this case. He stated that he raised "part" of the money needed and the NAACP said they would furnish the rest. He made an application addressed to the "president." He stated that the note was made payable, however, to Clifford Davis. He and Flax had never met until they met through the NAACP.

March 22, 1960, Dallas Times Herald and other papers throughout the Nation: An Associated Press article by James Marlow discusses the fact that the NAACP may be turning to militant action. Thurgood Marshall, NAACP chief attorney, conferred in New York with 60 lawyers called in from every Southern State, and then announced that the Negro demonstrators who get arrested (future tense) in the South will have the legal help to fight their cases.

March 20, 1960, Roy Wilkins on a nationally broadcast TV program, in his capacity as chief spokesman and Secretary of the NAACP, stated that he "couldn't predict whether the continued activity of the young southern Negroes will lead to violence. * * * If the mood of these young people is interpreted right, they are tired of the legal approach."

March 5, 1960, Dallas Morning News: Gloster B. Current, New York director of all NAACP branches, speaking at a Southwest regional conference of the NAACP in Dallas, stated that sit-in demonstrations were spontaneous and not made with NAACP consultation. He added quickly, however, that the group endorses and supports the protests to segregated lunch counters. "Some of our branches in these areas have asked and obtained legal help from the NAACP," he said.

March 6, 1960, Dallas Times Herald: Large headlines, on front page. "Slow Integration for Dallas Blasted by NAACP Leader"—Roy Wilkins, executive secretary of the NAACP, criticized President Eisenhower, the Dallas School Board, and NAACP Texas members for being too slow and too meek. He served notice that the NAACP is weary of the runaround in Texas and that it will assist Negro parents in lawsuits aimed at desegregating public schools. He "scorched" Dixie Senators, saying, "To put it bluntly they are white people persecuting the Negroes because they have the power to do so. This is a pretty low basis upon which to act as a U.S. Senator."

March 6, 1960, Dallas Morning News: Mrs. Daisy Bates, Arkansas NAACP president, reminded her audience, at the same conference, that a Negro was running for the Dallas School Board post and "if she lived here," she would support the candidacy of Rev. H. R. James.

March 16, 1960, Dallas Morning News: "Stores in San Antonio to Eliminate Color Bars"—The local youth director of the NAACP in San Antonio stated March 13 that retail stores in San Antonio had been delivered an ultimatum to integrate lunch counters or face sitdown demonstrations.

Rev. C. Don Baugh, executive director of the San Antonio Council of Churches, made the announcement of the elimination of color bars, but he would not say whether NAACP representatives were present at the closed meeting of the religious leaders and retail representatives. Burns [the NAACP youth leader] "was quietly jubilant."

April 14, 1958, Dallas Morning News: Rev. J. Raymond Henderson, pastor of the Second Baptist Church of Los Angeles, on a nationwide tour on behalf of the NAACP, spoke in Dallas to a NAACP mass meeting. Nobody ever became free merely by asking for freedom, he declared, adding, "The Negro must become a plague to those holding him in slavery. He must not let them rest. He must rise up and assert his rights."

Such assertions as the foregoing not only notify the people of Texas that the NAACP is actively engaging in the practice of law and offering financial aid to those reading or listening, but it is actually soliciting and encouraging the bringing of suits at law in Texas courts. Further, it is instigating agitation and violence against members of the white race.

May 15, 1960, Houston Chronicle: Herbert L. Wright, New York, national director, NAACP Youth and College Division, who was present in Houston to hold a leadership conference and training school for sit-ins during the fall of 1960, stated that of 79 protests in Southern States, 85 percent of persons involved were NAACP members; of 1,591 arrests, 90 percent were released through the assistance of the NAACP. They had posted $107,300 in jail bonds. Of 89 students injured, 64 received medical attention through NAACP. "If that is intrusion, then we've intruded," he stated.

The meeting called by the NAACP at Prairie View A. & M. in December 1959 was not publicized in the daily press as were the foregoing incidents, but it clearly constituted a violation of the injunction against the NAACP since the NAACP openly anticipated legal action as the result of the sit-in demonstrations and members of its legal staff not only gave legal advice and financial aid prior to the demonstrations but induced the students to enter the demonstrations on the promise that the NAACP would provide both financial aid and legal defense after charges were brought.

The $53,000 taken to Wiley College by NAACP Attorneys Durham and Bunkley and by Romeo Williams was naturally not publicized. But Romeo Williams made several statements during the week following the first sit-in at Marshall which clearly indicated that the NAACP was going to financially assist those charged as a result of the demonstrations. These statements were sufficiently strong to warrant an examination into the extent of such aid, both financial and legal.

It is the responsibility of the office of the attorney general of the State of Texas to keep alert for indications through any and all channels, including the daily press and NAACP publications, as to any violations of the injunction against the NAACP. Citizens of Texas must rely upon that office to protect their legal rights against such violations.

Likewise citizens of Texas must be alert to possible agitators and those who would stir up trouble among races that have lived together in comparative peace and friendship for nearly a century.

SUPPLEMENT

Freedom riders

Although the freedom riders have not officially "ridden" in Texas, a section is being included in this report on some of their personnel, since many of their leaders have been active also in the sit-in demonstrations and the continuing racial agitation. The names of Revs. Martin Luther King, Jr., Ralph D. Abernathy, Fred L. Shuttlesworth, and James M. Lawson, together with CORE, SCLC, NAACP, MIA, Student Nonviolence Committee, and a number of their allied committees and organizations, appear and reappear with regularity. Pamphlets from CORE, FOR, and James Lawson were distributed in Marshall, Tex., before the sit-in demonstrations there in the spring of 1960.

Also, the timing of the sit-ins and the freedom riders bears a striking similarity. Gov. James F. Byrnes of South Carolina, former member of the U.S. Supreme Court, Secretary of State, Senator, a man who has served his country in many distinguished positions, pointed out in his address before the State bar of Texas in 1960 that CORE backed the sit-ins and conducts schools for the purpose of training participants in these demonstrations. Byrnes explained how they were carefully timed, along with anti-U.S. demonstrations in other countries, to precede the Eisenhower-Khrushchev summit conference, with the hope that because of the demonstrations and the accompanying racial agitation in Southern States, race riots would result, troops be called out, and lives lost, with the United States being placed in a defensive position at the conference table. Similarly in 1961, the "freedom rides" were initiated shortly before the Kennedy-Khrushchev summit conference, and some persons gave the Communists the ammunition they wanted by injecting violence into the affairs.

Just as the sit-in demonstrators usually notified the press well in advance of the time and location of contemplated demonstrations, so have the bus, train, and plane riders issued advance publicity, seeking full press coverage and hoping to attract opponents that will inflict physical violence upon them and place them in the role of martyrs. When they were given police escort between cities in order to avoid any possibility of violence, they protested vigorously, and group leader James Lawson maintained that they needed neither help nor protection from the authorities. So the officers were placed in the position of being condemned if they protected the riders and being castigated if they did not.

Just as the Communist Party openly supported the sit-in demonstrations in the Communist newspaper, The Worker, and praised them in speeches in 1960, so in 1961 in the June issue of its magazine Political Affairs, Editor Herbert Aptheker praises the freedom riders and berates the Government authorities. He demands that the President, "who is endowed with more power than any other single person in the United States," use that power and send in the Armed Forces, "with fully integrated units," to back up the freedom riders. He states that the President "is chief initiator of legislation, let him initiate needed legislation." He concludes the eight-page article by stating that the so-called Negro quesion is the central question of our country; and thus the known Communists fan the flames openly. Some activists who have not been identified publicly as Communist Party members nonetheless have long records of subversive activity against the welfare of the United States.

Examine the case of James Douglas Peck, the first "hero" of the freedom riders, who returned from Alabama parading his bandages and "wounds" and who appeared on May 26 on a national television network. Peck joined CORE in 1946 and is the white editor of its periodical CORE-lator. Records of the U.S. Senate Internal Security Subcommittee show that Peck is an active member of the Committee for Nonviolent Action (CNVA), which has demonstrated against construction of our Polaris submarine at Groton, Conn. This group is headed by A. J. Muste, who for many years was executive secretary of FOR and who has at least 32 subversive citations. Muste headed the group of "impartial" observers at the 16th annual convention Communist Party, U.S.A., which praised proceedings there, and FBI Director J. Edgar Hoover has described Muste as having long fronted for Communists. Ashton Jones was was affiliated with CNVA and activities of the group are described in the Communist Worker of April 12, 1961. During World War II, Peck declared himself a "conscientious objector" and not only did he refuse to fight for his country but, unlike most CO's, he refused to become a medic or take part in other noncombat activities connected with the military. As a result, on November 27, 1942, he was sentenced to serve 3 years in the Federal prison at Danbury, Conn. He has arrest records for racial agitation in Palisades Park and Cliffside Park, N.J., in July and August 1947. In 1957 he was arreted with others at an atomic energy project. In 1958 he served 60 days in jail in Honolulu for violation of a Federal court injunction by sailing with a group aboard the yacht *Golden Rule* into the Pacific Ocean Lucifer Nuclear Testing Area. Heading the illegal voyage of the *Golden Rule* was Albert Bigelow, who is mentioned earlier in this report as narrator of the stage drama, "Which Way the Wind," produced at SMU by AFSC. The same Albert Bigelow was with James Peck on the CORE bus. Peck is listed as the leader of a 2-day conference of opponents of the death penalty in the *Caryl Chessman* case in the Communist newspaper, Peoples World, July 23, 1960. He is also listed, along with Conrad Browne and Maurice McCrackin, as editorial contributor to The Peacemaker, Cincinnati, Ohio. Browne and McCrackin are leaders of Koinonia Farm, described under that heading in this report, and were participants in the 1957 Labor Day seminar at the Highlander Folk School, Monteagle, Tenn., where Martin Luther King was a featured speaker.

James Leonard Farmer, 42, a Negro who was one of the founders of CORE and who was named as its national director early in 1961, was arrested in Jackson, Miss., and served 3 weeks for breach of the peace, was released on bond on July 4 and returned to New York to direct further activity by the CORE riders. He also appeared on a national television show and accused the prison of "dehumanizing the riders to make us as animals." Farmer's white wife embraced him warmly for the benefit of the television cameras. Farmer worked for FOR and has served as a program director of NAACP. Along with Martin Luther King, Jr., he is a member of the National Board of the Committee for a Sane Nuclear Policy (SANE), which advocates unilateral cessation of nuclear testing for the United States, and which has many Communist-fronters among its guiding personnel. Farmer studied medicine at Wiley College, Marshall, Tex., briefly, abandoned that to attend Howard University where he took a divinity degree but was never ordained. He served as field secretary for the Student League for Industrial Democracy (SLID), visiting many college campuses, lecturing on "labor and social problems" and organizing college discussion groups. The following quotes are from the September–October 1952 issue of Forcast, the FOR publication:

"Los Angeles Action Cell Sponsors Bull Session, Forty Attend: Meeting in the cramped quarters of Dave McReynold's house in Ocean Park, more than 40 students came from throughout Los Angeles on October 4 for the first meeting of the new action cell. Present were speakers from the WRL (War Resisters League) and the Social Youth League to exchange views.

"UCLA, FOR Members Assist in Formation of Anti-war Student Group: 'Vanguard' a student group of socialists and pacifists as well as independent students, has been set up at UCLA with the aid of the FOR members there. The group supports 'Anvil,' antiwar student publication, and plans action on peace and civil liberties.

"Tucson Youth Cell Sets Up Speakers Bureau: 15 young people turned out for a meeting of the Tucson Youth Cell to help form a speakers bureau for that area.

"Jim Farmer, George Houser in Area: Jim Farmer, of the Student League for Industrial Democracy, and George Houser of the Committee on Racial Equality, will soon be in the Southwest. For speaking dates for Houser, contact the FOR office. For Farmer, contact Myra Dellinger, 330 Mavis, Los Angeles."

Mr. Ken Earl, a lawyer formerly on the staff of two subcommittees of the U.S. Senate Judiciary Committee—the Subcommittee on Internal Security and the Subcommittee on Immigration—testified before the House Special Committee To Investigate Tax-Exempt Foundations (the Reece committee) on June 15, 1954, that the Intercollegiate Socialist Society, founded in 1905 following a call by Upton Sinclair and George H. Strobell to promote interest in socialism among college men and women, for various reasons in 1921 changed the name of the society to League for Industrial Democracy (LID). Mr. Earl contended that the LID "is an adjunct of the Socialist Party," and produced evidence from publications of the LID itself, and accounts of its activities and proceedings. From "The Inter-Collegiate Student Council" of the LID came the following:

"The LID therefore works to bring a new social order; not by thinking alone, though a higher order of thought is required; not by outraged indignation, finding an outlet in a futile banging of fists against the citadel of capitalism; but by the combination of thought and action and an understanding of what is the weakness of capitalism in order to bring about socialism in our own lifetime."

The LID publication, Revolt (which name was later changed to the Student Outlook), contained the following quotation:

"The League for Industrial Democracy is a militant educational movement which challenges those who would think and act for a 'new social order based on production for use and not for profit.' That is a revolutionary slogan. It means that members of the LID think and work for the elimination of capitalism, and the substitution for it of a new order. * * *"

Another article in Revolt states that, "We may not need a majority," and refers to "The putrid mess of capitalism."

In his television appearance, Farmer stated that one of the aims of the continued waves of riders upon Mississippi was to make use of economic pressure by creating expense for the city and State involved in their handling of the legal and prison problems arising from large numbers of prisoners involved.

Although CORE has not been cited as a Communist-front group by a Federal or State committee, such charges were brought by Brig. Gen. T. B. Birdsong, head of the Mississippi Highway Patrol, who stated that two white riders, Katherine Pleune and Hames R. Wahlstrom, arrested in Jackson, Miss.. had been among 202 American students attending a Soviet-directed seminar in Cuba last February and he further charged that they were addressed by officials of Soviet Russia to teach them "how to make sit-ins, walk-ins, kneel-ins, and freedom rides." Gordon Carey, white field director of CORE, denied these charges, but said that CORE knew that Miss Pleune was in Cuba. Wahlstrom was quoted in an interview as saying that he went to Cuba last Christmas with other University of Wisconsin students who were members of the Fair Play for Cuba Committee, but he denied Soviet seminars for freedom rides. In the hearings before the Senate Internal Security Subcommittee on the Fair Play for Cuba Committee, the statement is made (p. 92) by Senator James O. Eastland, chairman, as follows: "I think it is obvious to everyone that the Fair Play for Cuba Committee is a Communist operation." An advertisement placed in the New York Times of April 6, 1960, by the Fair Play for Cuba Committee was established as having been paid for in large measure by the Castro government. The list of sponsors of the advertisement includes the name of Robert F. Williams, the

Negro president of the Union County, N.C., branch of the NAACP. Julian Mayfield, writing in the April 1961 issue of Commentary, states that he first met Robert Williams in Havana in the summer of 1960, after most other prominent American Negroes, under public pressure, had broken with Castro. But he states that Williams was still there, applauded in public appearances, and keeping extremely busy excoriating the United States, claiming that Negro Americans were being denied freedom in the United States. According to Mayfield, Williams and Castro had often appeared together on television programs and there seemed to exist a warm friendship between the two.

Another early CORE rider was Dr. Walter Bergman, 61, former faculty member of the University of Michigan and of Wayne State University, who arrived via plane in New Orleans with 16 other CORE members, and John Seigenthaler, an assistant to Attorney General Robert F. Kennedy, after their hectic Alabama bus reception. Bergman complained that they got only "shoddy" police protection, but about the same time James Lawson was complaining that they were getting too much protection. Dr. Bergman has been a member or sponsor of at least six organizations officially listed as subversive Communist fronts, including the People's Institute of Applied Religion, which Director J. Edgar Hoover has characterized as one of the most violently pro-Communist fronts of them all. The U.S. State Department recalled his passport while he was on a "study" tour in Europe in 1953. In sworn testimony given in 1938, Walter S. Reynolds, American Legion, testified that Dr. Bergman was a candidate for political office on the Socialist ticket and that on March 14, 1937, Bergman acted as chairman at a meeting at which William Weinstone, secretary of the Communist Party, appeared as the principal speaker. Another witness, Clyde Morrow, a former Communist Party member, testified that on May 27, 1933, the Communist Party held a demonstration at Grand Circus Park, Mich., where Bergman asked the audience to arise and sing the "International" (the official song of the Communist Party).

The name of Martin Luther King, Jr., continues to appear in numerous organizations and activities, and overlapping boards and directorates of the various groups contain known agitators. Fully aware of all the tension existing in Montgomery on May 20–21, King made a special and well-publicized trip to speak at the Negro Baptist Church in Montgomery and, as he had obviously hoped, a large crowd gathered outside with all the ingredients necessary for trouble. On June 17 King flew from Atlanta to Los Angeles to raise $25,000 and secure volunteer riders to join in challenging laws in Southern States. He rode in a parade on Saturday and spoke before a rally in the Sports Arena on Sunday, June 18. Rev. L. Sylvester Odom, president of the Western Christian Leadership Conference, announced that WCLC had already contributed approximately $15,000 to SCLC this year. Within a week 20 riders arrived from California to be arrested in Jackson, Miss.

Four of King's associates were named with him in the temporary restraining order issued by Federal Judge Frank M. Johnson in Alabama. They were Rev. Ralph D. Abernathy, president of the MIA and an officer in SCLC; Rev. Fred L. Shuttlesworth, director in SCEF, officer in SCLC, and president of Alabama Movement for Christian Rights, which was formed after the NAACP was outlawed in Alabama; Rev. Solomon S. Seay, Sr., executive secretary, MIA, and member of executive council of Highlander Folk School, who pledged both financial and moral support for Highlander School after the authorities raided it on July 31, 1959; and Rev. Wyatt Tee Walker, Virginia State director of CORE, and the executive director of SCLC, who organized lunch counter and library demonstrations in Petersburg, Fla., in 1960, and who was a speaker at the mass meeting at Raleigh, S.C., in April 1960. The 17 riders arrested in Jackson on May 28, 1961, had come from the home of Reverend Abernathy in Montgomery. Reverend Seay's son, Solomon Seay, Jr., has been retained as an attorney by CORE.

Another CORE rider who was extremely active in the sit-ins has been Rev. James M. Lawson, a 32-year-old Negro who was expelled in 1960 from the Divinity School of Vanderbilt University after he refused to curtail his organizational activities of sit-in demonstrations. He prepared some of the handbills circulated at Bishop and Wiley Colleges in Texas in preparation for the sit-ins there. He spent nearly a year in a Federal penitentiary as a conscientious objector. After he was expelled from Vanderbilt, he got a degree from Boston University and is now pastor of Schott Chapel Methodist Church, Shelbyville, Tenn. He teaches workshops in "nonviolence"; has been active in CLC as vice president of Nash-

ville CLC; is southern regional secretary, FOR; and was speaker at the mass meeting at Raleigh in April 1960.

Among the members of the advisory committee of CORE, as listed on their letterheads and in CORE publications, all of the following have been publicly identified as supporters of two or more subversive, Communist-front or Communist activities, with 4 of them having over 60 citations each: Roger N. Baldwin, Algernon D. Black, Allan Knight Chalmers, Earl B. Dickerson, Rabbi Roland B. Gittelsohn, Sidney Hollander, Dorothy Maynor, A. J. Muste, A. Philip Randolph, Ira D. A. Reid, Walter Reuther, Lillian Smith, Goodwin Watson, Charles S. Zimmerman.

In July 1961, the Jackson police department released testimony given the House Committee on Un-American Activities that two convicted freedom riders were members of Communist groups.

These two are Rose Rosenberg, 55, of Los Angeles, and Jean Kidwell Pestanta, 43, of San Francisco. Both women are white attorneys. They were in a biracial group of riders who were arrested in a segregated waiting room here Saturday night and are now serving terms for breach of the peace. Records of the congressional committee showed that former Communists Milton S. Tyre and A. Margurg Yerkes identified Miss Rosenberg as a Communist in testimony in the early 1950's. Another witness, William A. Wheeler, also said she was a Communist.

Mrs. Pestanta was allegedly identified in a 1952 hearing as a member of a Communist lawyers group by witnesses David Aaron and Yerkes.

Her husband, Frank Pestanta, was also named as a Communist by Wheeler.

Both women appeared before the committee and refused to say if they were Communists, the records said.

Mississippi officials have charged that Communists are behind the "freedom riders."

RECOMMENDATIONS

Under U.S. Supreme Court decisions, power to deal with subversion has been removed from the legislatures of the States. Resolutions to Congress memorializing it to restore this power to the States have been to no avail, but this action must be renewed in the light of the revelations of this investigation.

It is further the recommendation of the committee that the office of the attorney general of Texas review this report and other relevant material to determine if there have been violations of the injunction against activity of the NAACP in this State.

Mr. MARSHALL. Mr. Chairman, can the record show when he said, "Marshall" he meant "Marshall, Tex."

Senator JOHNSTON. Of course.

Mr. MARSHALL. Just for the record.

Mr. LIPSCOMB. Judge Marshall, Dr. Alfred H. Kelly, professor of history, Wayne University, Detroit, Mich., delivered an address on December 28, 1961, at the annual meeting of the American Historical Association in Washington, D.C., styled "An Inside View of Brown versus Board."

Do you know Dr. Kelly and have you had an opportunity to read the entire text of this address?

Mr. MARSHALL. I do know Dr. Kelly. I have not seen him since approximately 1953. I did read his whole report.

Is that a full answer to your question?

Mr. LIPSCOMB. Yes, sir.

Dr. Kelly states it was in July of 1953 that you wrote to him to inquire if he would prepare a research paper on the intent of the framers of the 14th amendment respecting the constitutionality of racially segregated schools, and for this paper you offered him $400; is that correct?

Mr. MARSHALL. I think it was approximately that. I know I wrote him; I know I asked him and I told him we would pay him enough to take care of his expenses.

Mr. LIPSCOMB. Dr. Kelly further states that the NAACP office sent out a call to about 125 leading scholars of the country to assist in this project and a great number of first-rate professional figures responded. I believe at the first conference there were some 40 to 50 professors along with 30 or 40 lawyers; were there not?

Mr. MARSHALL. There were, I would say, a large number of professors, about a half-dozen college presidents, and about an equal number of lawyers.

Mr. LIPSCOMB. This conference was called to determine the question passed onto the litigants by the U.S. Supreme Court as to the intent of the framers of the 14 amendment with respect to school segregation; was it not? Was that the purpose of the conference?

Mr. MARSHALL. That was the purpose of the conference because the Supreme Court had directed that question to us to get our answer.

Mr. LIPSCOMB. Dr. Kelly says that you ran out of money to pay expenses for conferees and you went to Philadelphia and you came back with $30,000 in greenbacks, and to quote your words," "I put the touch on those boys down there and they paid off."

Mr. MARSHALL. In the first place, I don't know where under the sun Dr. Kelly got that from. I don't know of anybody in Philadelphia that has $30,000. The only close friend I have is Judge Hastie and he has less than I do, if possible.

I don't know where he got that idea. I can say it is completely untrue, and I do not question Mr. Kelly's integrity. I just don't know where he got the idea from. I did check on that, and I found that the legal defense fund drew vouchers, had checks signed like we always do. The money goes through our treasury, any money we get. He might have been talking about a fund that was raised by the Pittsburgh Courier, a newspaper in Pittsburgh, Pa., that did carry on a fund-raising campaign, but the money from the Pittsburgh Courier was by check which went through our bank just as any other contributions do. And whatever money he got he got from our treasury and not from me.

Mr. LIPSCOMB. Well, he did state that you left the conference and went, he said, to Philadelphia and came back.

Do you recall whether you left the conference at that time?

Mr. MARSHALL. Certainly I didn't; I was running the conference.

Mr. LIPSCOMB. Returning to Dr. Kelly's paper and his work with you in New York in 1953, he sums up his personal dilemma in these words:

> I am very much afraid that for the next few days I ceased to function as a historian and instead took up the practice of law without a license. The problem we faced was not the historian's discovery of the truth, the whole truth, and nothing but the truth; the problem instead was the formulation of an adequate gloss on the fateful events of 1866 sufficient to convince the court that we had something of a historical case.
>
> Never has there been, for me at least, a more dramatic illustration of the difference in function, technique, and outlook between lawyer and historian. It is not that we were engaged in formulating lies; there was nothing as crude and naive as that. But we were using facts, emphasizing facts, bearing down on facts, sliding off facts, quietly ignoring facts, and above all interpreting facts in a way to do what Marshall said we had to do—"get by those boys down there."

Now, Judge, where facts and the search for truth are involved, do you also differentiate between the outlook of a lawyer and a historian as Dr. Kelly so obviously does?

Mr. MARSHALL. Mr. Lipscomb, I defy anybody to show any statement in any brief I have ever filed that wasn't 100 percent accurate and true.

Mr. LIPSCOMB. Again, Dr. Kelly expresses his dilemma in these words:

I was trying to be both historian and advocate within the same paper, and the combination, as I found out, was not a very good one. I tried to draw conclusions which were at odds with the thing which most impressed me at the time—the damning modifications of the civil rights bill in the House and its apparent identity in purpose with the 14th amendment. I was facing for the first time in my own career the deadly opposition between my professional integrity as a historian and my wishes and hopes with respect to a contemporary question of values, of ideals, of policy, of partisanship, and of political objectives. I suppose if a man is without scruple this matter will not bother him, but I am frank to say that it bothered me terribly.

At the time you were dealing with Dr. Kelly in 1953, did he then evidence these reservations on the project in which you were engaged?

Mr. MARSHALL. No; he did not. I can tell you this. We didn't buy what he offered.

Mr. LIPSCOMB. Sir?

Mr. MARSHALL. We didn't buy what he offered.

The paper that he turned in, if you read his paper, and read the portion in the brief, you would get no similarity to it at all. I will say this, if Dr. Kelly thinks that perhaps he compromised his integrity, that is his own opinion, but I can tell you I have never compromised my integrity at that time or any other time.

Mr. LIPSCOMB. After the original conference, Dr. Kelly returned to New York at least two or three more times to work with smaller groups of lawyers and specialists who were going to hammer out the brief on the 14th amendment; did he not?

Mr. MARSHALL. He came back to New York one or two times to sit down with a lawyer who was to knock out, hammer out, to use your phrase, about 1 page of a 250-page brief.

You see, Mr. Lipscomb, we had 100 and some—we deliberately got every historian that was of reputation available. We also deliberately got the ones that had varying views so we could get the view of one against the view of the other in the hope that in the end we would get the accurate view, and in our brief we think we did.

Mr. LIPSCOMB. From Dr. Kelly's paper, I judge that as a scholar and a historian, he worked so closely with you that he was able to make a penetrating observation as to your own capacity and abilities for which he had a most high regard, and also your attitude, prejudices, and bias regarding the issues in which you were mutually interested. I am going to read from a portion of Dr. Kelly's paper and go into these passages while I ask for comment.

Dr. Kelly says:

This may be the place to observe that it was in these conferences that I came to understand why Thurgood Marshall was such a cunning and powerful strategist in the campaign for Negro rights in America.

The Saturday Evening Post a few years ago called him a charismatic personality; certainly he is all of that, for his dynamism, personality, magnetism, and charm are undeniable, while he radiates a tremendous sense of personal power.

But I found even more interesting his slashing and mordant sense of humor, his profoundly moving sense of identity with the Negro's tragic role in America, and his tremendous moral commitment to the work in which he was engaged.

The sudden shifts of mood he displayed on occasion were nothing short of astonishing. One morning in his office, he related to John Frank of Yale and myself, wtih tears in his eyes and a voice dulled with the cumulative grief of 300 years, the experiment of a leading sociologist with a group of little colored girls, who were given their choice of playing with two sets of dolls, one white or Caucasian, one black or Negro. Even at 3 years of age, he said, the little colored girls preferred the white dolls, describing the black dolls as "bad" and "not nice" and the white dolls as "pretty" and "good."

As Marshall told the story he seemed bowed down under an unbearable burden of tragedy.

A few moments later, his ebullient hilarity restored, he good-naturedly railed at his secretary's negligence, informing her in a voice deliberately weighted with excess Negro accent not to forget "who d' H.N. is around here," and he found immensely amusing my discomfiture at being told what "H.N." stood for. I shall not tell you here.

"Sometimes Marshall could reveal a mood of sudden savagery and bitterness. Customarily he referred to the Mason and Dixon line as "the Smith and Wesson line."

On one occasion he read with savage delight from an Iowa frontier paper which portrayed a local Negro community as a mass of illiterate apes. For him, he made clear, this epitomized the white man's attitude toward his people.

On still another occasion at an evening session at which I found myself playing devil's advocate with a bit too much enthusiasm and lack of tact, Marshall stopped suddenly and speaking into the growing silence around the table said:

"Alfred, you are one of us here and I like you. But"—and this in a voice of terrible intensity—"I want you to understand that when us colored folks takes over, every time a white man draws a breath, he'll have to pay a fine."

Is it still your conviction that when the colored folks take over that every time a white man draws a breath he will have to pay a fine?

Mr. MARSHALL. That has never been my conviction, is not now and never will be.

Mr. LIPSCOMB. Dr. Kelly has misquoted you?

Mr. MARSHALL. I am certain he has on that point.

Mr. LIPSCOMB. Mr. Chairman, I would like to——

Mr. MARSHALL. I should like to correct another thing about me, if I may, Mr. Chairman, about the statement, for example, that I yelled at my secretary. I have had her for 23 years and I have yelled at her twice, both times in the first week and haven't yelled at her since in 23 years.

Mr. LIPSCOMB. I would like to offer for the record the entire transcript of the address delivered by Dr. Kelly.

Senator JOHNSTON. That will become part of the record.

(The transcript referred to follows:)

AN INSIDE VIEW OF "BROWN V. BOARD"

PROLOG

The preparation of this paper drove home upon its author one fundamental point which others of our craft doubtless have encountered many times previously: it is extremely difficult if not impossible for a historian to function adequately both as a primary source and as a secondary source with respect to one and the same subject at one and the same time. The point of view of an immediate participant in a series of important events, however minor his role may have been, must of necessity be badly distorted in two fundamental respects: first, events in which the narrator actually participated assume for him a substance and importance all out of proportion to the ultimate significance they ought to have in any balanced historical account. This will be true simply because of the immense impact of the immediate upon the human mind. Events experienced at firsthand have a kind of permanence and validity for the observer which those events known only through secondary accounts and other men's documentary sources can never achieve. The consequence, even for an historian-

participant, is a distorted image of the events in question, involving gross maladjustments of the realities of significance, relevance, time, place, and proportion which a competent historian, approaching the matter without the complications of personal involvement, presumably would have been able to avoid.

Equally obvious, also is the distortion which a historian-participant imposes upon events by reason of his intellectual and emotional involvement therein. Human nature will dictate an exaggeration of his own role; he will see causal connections hardly apparent to an outsider and quite possibly lacking in any inherent validity. When the matter is as controversial as is the school segregation question, any action he takes will drive him over into psychic commitment and thereafter cause him to defend and rationalize his actions, with respect to the great issues at hand, as a committed person. Consciously or unconsciously he will defend the value system implied in his role; probably he will also engage in a factual selectivity somewhat different—nay, even decidedly different—than that which would have controlled him had he functioned solely as an impartial outside historian. Even if we grant that any historian to some degree suffers from these same limitations of commitment and special interest, these liabilities can in no wise be compared to those under which the actual participant labors when he attempts later to set the story down on paper.

This narrative, in short, is hardly likely to bear close scrutiny as adequate history, either in perspective or impartiality. The author's role in *Brown* v. *Board of Education of Topeka* was hardly a major one; yet he was enough involved so that this account best is handled, in some part, in the first person. The author's sense of emotional and intellectual commitment, with their consequences for the hierarchy of social and political values presented here, will also be all too apparent. For what it is worth, however, the narrative follows.

One day in early July 1953, I received a letter from Mr. Thurgood Marshall, general counsel of the legal defense and educational fund of the National Association for the Advancement of Colored People. Would I be willing, Mr. Marshall inquired, to prepare a research paper on the intent of the framers of the 14th amendment with respect to the constitutionality of racially segregated schools?

The U.S. Supreme Court, Mr. Marshall explained, had recently heard arguments on a series of school segregation cases, four of them on appeal from the States and one of them from the Supreme Court of the District of Columbia. Instead of deciding the cases within the merits of the longstanding "separate but equal" rule, however, the Court had returned the cases to opposing counsel for reargument, posing to the lawyers on both sides the following questions, here somewhat paraphrased:

"What had been the intent of the framers of the 14th amendment, the Court had inquired, with respect to school segregation? Had the authors of the amendment presumed that their constitutional handiwork would render segregated schools categorically unconstitutional? Or had they, as a possible alternative, presumed that Congress and the courts would have a discretionary power under the amendment to strike down school segregation, either by statute or court decision? And what had been the understanding of the several States who ratified the amendment with respect to its impact upon school segregation? And assuming that segregated schools violated the 14th amendment, the court continued, was it within the Court's authority to exercise its equity powers to effect a gradual desegregation and thereby to reconcile by degrees formally segregated public schools with the requirements of the Constitution?"

Thus it had become necessary, Mr. Marshall explained, for his organization to seek the aid of constitutional historians to answer the questions the Court had posed. My paper, if I consented to prepage it, would become the basis, along with a number of other studies, for a conference of several score scholars and lawyers to be staged by the NAACP in New York in late September. The purpose of the conference would be to advise and assist the NAACP in the formulation of its arguments and strategy for the forthcoming reargument before the Supreme Court. For the paper, Mr. Mashall offered me $400.

My paper, it must be emphasized here, was but one of five such prepared for the conference. C. Vann Woodward and John Hope Franklin, both historians of distinction, were retained by Marshall to prepare studies of differing aspects of southern reconstruction and its relation to the emergence of school segregation during and after that explosive era, while Horace Bond, then president of Lincoln University, was to prepare a paper on State educational systems during and after the period of the amendment. Howard Jay Graham, distinguished constitutionalist, was to prepare a paper on the abolitionist back-

grounds of the 14th amendment and their implications for the amendment's meaning. All these studies were fundamental to the September conference, all contributed valuable ideas to the brief which Marshall took to the Court in December.

It was obvious that the five school segregation cases which the NAACP had gathered under its wing, providing both legal assistance, money, and a general overall direction of strategy, had a momentous character. Even in 1953, it seemed probable that *Brown* v. *Board of Education of Topeka* and its sister cases would stand out in the Court's history in a fashion comparable to *Marbury* v. *Madison*, *Dred Scott* v. *Sandford*, or the notorious *Schechter* (sick chicken) case of 1935. For those persons in this audience who lack an immediate technical acquaintance with the vagaries of constitutional history, some further exposition of historical background is probably in order here.

At stake in *Brown* v. *Board* was the venerable "separate but equal" rule, which had first apeared in Justice Shaw's opinion in the *Roberts* case in Massachusetts more than a century before, and which the Supreme Court of the United States in 1896, after almost 50 years, had written into Federal constitutional law in the now celebrated case of *Plessy* v. *Ferguson*. Justice Brown's *Plessy* opinion in considerable part had rested upon a historical interpretation of the intent of the framers of the 14th amendment. It was self-evident, he had said, that Congress, in writing the equal protection clause into the Constitution, had not intended to destroy legalized segregation between the races. The learned Justice had offered no evidence in support of this rather too-pat historical affirmation; instead he had passed swiftly to a sociological justification for legalized segregation between the races. The Court, he said, could not be expected to disregard or to overturn the basic biological realities of life with respect to the relationships of the races as they found expression in the legal institutions of the several States. The Negro was entitled to equal protection, true, but segregated institutions did not violate that guarantee as long as substantial equality of facilities for the two races was preserved.

The immediate case at hand dealt only with the constitutionality of southern Jim Crow car laws, but with a grand sweep of the judicial arm, Justice Brown, in dicta at least, brought every conceivable form of legalized segregation, including that in public schools, within the encompassing folds of the Court's opinion. Thus the Court, by historical and sociological rationalization, had found it possible to reconcile with "equal protection" that which every observer then and now knows gave legal sanction to inherent inequality of privilege and protection. Ironically, Justice Harlan, the Kentucky ex-slaveholder, alone spoke out in protest, proclaiming "that the Constitution is colorblind."

It is easy to criticize the *Plessy* opinion today, and most constitutional writers have not hesitated to do so. One recent authority, Robert Harris, has castigated Brown's argument as "a compound of bad logic, bad history, bad sociology, and bad constitutional law, permeated with theories of social Darwinism" and presenting "overtones of white racial supremacy as scientific truth." The indictment is adequate enough on several counts, but it ignores two important facts: first, the *Plessy* opinion rested on a powerful body of specific precedent built up in long series of cases in the State courts over a period of more than 25 years. Second, the Court undoubtedly had merely translated into constitutional law the prevalent body of social myth, institutions, and statute law as it existed in the United States at the end of the 19th century. The concept of "separate but equal" had received official validation, in school segregation alone, in more than 30 cases between 1868 and 1896. Let us remember that even in our own time the President was obliged to use the Army to secure even nominal compliance with a Federal court desegregation order in Arkansas. Had the Court contravened the then-prevailing legal myth, it doubtless would have found its dictum somehow flouted, circumvented and ignored. *Plessy*, in fact, was about as valid for its time as *Brown* v. *Board* is for ours. And as Justice Holmes once sharply reminded learned counsel, the Supreme Court is not a court of justice but a court of law. And law is power rationalized as myth and given formal status and sanction by the legal organs of society.

Plessy stood like a rock of constitutional law for almost half a century, but by 1950 it had become apparent that the fundations of the opinion at long last were crumbling away under a protracted legal assault which reflected in turn a profound revolution in the role of the Negro in American society. The forward wash of this new tidal wave of social change first reached the Supreme Court in 1938, in the *Gaines* case, in which the Justices first recognized that Missouri,

in refusing a Negro entry into the State university's law school, violated equal protection even when its authorities offered to send the applicant in question to law school in neighboring Illinois. The assault continued in a whole new series of school segregation cases, culminating in the *Sweatt* case of 1950, in which the Supreme Court struck down as a violation of equal protection a carefully established segregated law school which the State of Texas had created in an attempt to comply with the Court's increasingly stern injunctions with respect to equality of racially segregated facilities.

In this long series of cases from *Gaines* (1938) to *Sweatt* (1950), the Court never once hinted that the separate-but-equal rule was itself inadequate or subject to possible constitutional assault. Technically, instead, the Court merely was now treating with increasing seriousness the injunction that separate facilities must meet severe tests of quality in order to fall inside the equal protection rule. Not once did the Court suggest that separation itself was prima facie evidence of inequality, although that was undoubtedly the ultimate implication of the path along which it was now marching.

It was becoming increasingly apparent, in a pragmatic sense, that if the Court were to go much further with the legalized breakdown of segregation, the "separate but equal" rule itself would have to fall. And that meant something like a revolution in constitutional law. It would entail a piece of judicial lawmaking which could be justified only by a philosophy of extreme judicial activism, and this at the hands of a Court wherein several of the Justices had repeatedly expressed their disapproval of judicial activism and lawmaking by Court-made fiat.

Nevertheless, if the revolution in the Negro's legal status were to proceed much further, the attempt had to be made. And it was for this reason that the lawyers for the NAACP, who had directed the long legal battle in the courts from *Gaines* to *Sweatt*, decided sometime after 1950 to hurl a direct legal challenge at the *Plessy* rule itself. It was, Thurgood Marshall later told me, a deliberate policy decision on his part. Certainly it was an epoch-making one.

One possible ray of constitutional light there was. Technically—in the purely technical sense—the Supreme Court of the United States had never ruled that segregated schools were compatible with the 14th amendment. As observed above, Brown's strictures in *Plessy* with respect to segregated schools were mere dicta. And no more in the *Cummings* and *Berea* cases, or even in *Gong Lum*, which came to the Court in 1927, had the Court technically so ruled, though to all intents and purposes it had so assumed. This is the kind of nice distinction that constitutional lawyers grasp at; in fact, this nice argument appears in the Brown brief, although in the long run it turned out not to matter very much at all.

The new approach—that is, the direct attack on "separate but equal" as incompatible with equal protection—did not get far in the lower courts. When the association's lawyers used the argument in a segregation case in the Nation's Capital, here attacking segregation as inconsistent with the Civil Rights Act of 1866 and the due process clause of the fifth amendment, their analysis met blunt rejection at the hands of the Supreme Court of the District of Columbia. How was it possible, the court inquired somewhat caustically, to attach such a meaning to due process or to the Civil Rights Act when the same Congress which had passed both the Civil Rights Act and the 14th amendment had also legislated repeatedly for the support of segregated schools in the District? It was a hard question to answer. It is still a hard question to answer historically, if not legally.

In sum, the NAACP did not do well in its new approach in the lower courts. It lost its key cases in South Carolina, Virginia, and Kansas, as well as in the Federal case in the District. Only in Delaware did the association score a technical victory; here Louis Redding, quiet, gentle, shrewd, and razor keen, had won a State supreme court decision that school segregation in that State violated the 14th amendment because Negro school facilities were not truly equal to those for whites. But this was the old strategy, already partially outmoded by the new approach.

The five cases came up to the Supreme Court early in 1953 and were argued thereby counsel along much the same lines as in the lower courts. Instead of handing down a decision, however, the Court handed the cases back to opposing counsel with a request for reargument on the question of the historical intent of the framers of the 14th amendment. It was at once apparent that the NAACP and its lawyers had scored a tremendous breakthrough. What the Justices' re-

quest really seemed to say, the lawyers and scholars at work on the case presently were to agree, was something like this: "we would like to dispose of the *Plessy* rule, for once and for all, as constitutionally outmoded and incompatible with the realities of the Negro's role in contemporary American society. But we are fearfully embarrassed by the apparent historical absurdity of such an interpretation of the 14th amendment, and equally embarrassed by the obvious charge that the Court will be legislating if it simply imposes a new meaning on the amendment without regard to historical intent. Therefore, learned counsel, produce for us in this Court a plausible historical argument that will justify us in pronouncing, in solemn and awful sovereignty, that the 14th amendment properly was intended by its authors to abolish school segregation, or at least to sanction its abolition by judicial fiat. Thus fortified, we will declare segregated schools in the States to be unconstitutional as a violation of the 14th amendment. And school segregation in the District will fall under the parallel construction of Federal and State constitutional limitations."

The Court's order immediately produced a wild scramble on both sides for the services of constitutional historians, Reconstruction scholars, experts on public law, and so on. The questions the Court had asked were not the kind that lawyers ordinarily deal with, and in the face of them, the NAACP's lawyers confessed themselves, to the self-satisfied amusement of a number of historians and political scientists, to be substantially helpless. It was a scholar's inquiry which the Court had formulated, and not one within the ordinary purview of a lawyer's brief. The NAACP, by the way, was not alone in its embarrassment; counsel for the various respondent segregated school systems, now marshaled under the formidable legal generalship of veteran constitutional lawyer John W. Davis, were equally embarrassed. On both sides the call went out for historical scholarship. And that brings us back to Marshall's letter to me, and to his subsequent telephone calls in which he outlined to me the dilemma in which he and his associates found themselves.

Let us now attempt, at least briefly, to examine the historical question which the Court had thrown at opposing counsel and upon which Mr. Marshall had asked me to write. It appeared that the answers that historical scholarship came forward with would determine, in considerable part, the strategy of the NAACP's argument before the Court, and in part, also, its chances for success. Scores of other historians, political scientists, and lawyers, however, were to lend their minds and imaginations to the problem before the brief went to the Court itself.

As a constitutional historian, I knew of course that the 14th amendment had evolved, in some considerable part, out of the Civil Rights Act of 1866. Accordingly, I went to work on the 1866 volumes of the Congressional Globe, reading anew the story of the debates that winter and spring for clues concerning the intent which Trumbull, Bingham, Steven, and the other congressional radicals might have had with respect to legalized segregation, and school segregation in particular. I did not really expect to find very much of anything. As any reasonably competent historian could have told the Court and the lawyers on both sides, the historical questions they had framed did not necessarily have very much relevance at all to the issues that seemed consequential then to the embattled radicals who had hammered out the Civil Rights Act and the 14th amendment that spring of 1866. The politicians of 95 years ago had other and for them more important matters on their minds. The whole thing was a good example of the way in which the matter of what is politically important and historically significant shifts from one age to another. As I said, I did not expect to find much of anything.

To my surprise, the debates reprinted in the 1866 volumes of the Globe had a good deal to say about school segregation. Unhappily, from the NAACP's point of view, most of what appeared there at first blush looked rather decidedly bad. It is impossible to enter here into elaborate technical detail, but the substance of the matter, at least on first inspection, was this:

The original civil rights bill, as reported out on the Senate floor by Lyman Trumbull early in 1866, had indeed been so broadly worded that it obviously would have struck down and outlawed entirely all State segregation laws—those sanctioning segregated schools as well as Jim Crow transportation facilities, and so on. Moreover, the desegregation features of the bill had indeed been attacked bitterly in the Senate as revolutionary and monstrous by several Senators, among them Garret Davis of Kentucky, Reverdy Johnson of Maryland, and the conservative Republican Cowan of Pennsylvania. Cowen, in

particular, had denounced the bill on the ground that it would obviously do away with all segregated schools in the several States, only to have several Republican Radicals tell him that it was about time he woke up to the fact that there was a social and constitutional revolution going on in the country and that he had better accommodate himself to it. Nonetheless, the bill passed the Senate with its sweeping language intact, Trumbull having defended it as merely an implementation of the 13th amendment and what he insisted on calling the "bill of rights" incorporated in the "privileges and immunities clause" in article IV of the old Constitution. So far, very good from the NAACP point of view.

But when the civil rights bill reached the House, John A. Bingham, himself a Radical of Radicals and a member of the Committee of Fifteen, bitterly attacked the measure, on the grounds that Congress utterly lacked the power to legislate against legalized segregation in the States, either under the 13th amendment or the old "privileges and immunities" clause in article IV. To do so, he said, was grossly unconstitutional. And although Wilson of Iowa somewhat weakly protested that the bill as then written could not be construed as banning legally segregated schools, Bingham's attack sent the bill back to the House Judiciary Committee, where the disputed ambiguous language was stricken out. Thereafter, it was reported to the floor once more, this time in a form which absolutely eliminated the controversial segregation language. The conclusion for any reasonably objective historian was painfully clear: The Civil Rights Act as it passed Congress was specifically rewritten to avoid the embarrassing question of a congressional attack upon State racial segregation laws, including school segregation.

The debates on the 14th amendment itself, at first reading, hardly seemed to make the NAACP objective appear any easier. In the House, Thad Stevens bore down principally on the argument that the purpose of the amendment was to constitutionalize the Civil Rights Act—to remove doubts as to its constitutionality and to put the measure beyond the machinations of a future conservative Democratic majority in Congress. In the Senate the same argument received prominent attention.

Now note, if you will, the deadly implications of this situation for the NAACP's brief, at least as we have carried the argument thus far. If the Civil Rights Act, as passed, specifically had been amended so as not to abolish legalized State segregation, and if the 1st section of the 14th amendment had been passed merely to constitutionalize the Civil Rights Act, then it could hardly be argued that the intent of Congress, in submitting the 14th amendment to the States, had been to knock out legalized racial segregation in the States—in schools, in transportation, hotels, or anything else. It looked as if John W. Davis would win the historical argument hands down.

To be sure, there was a little more to the matter than the foregoing, fortunately quite a little more. In the Senate, Howard of Michigan, substituting for Fessenden in presenting the amendment to the floor, had asserted categorically that the first section, with its equal protection, privileges, immunities, and due process clauses, was intended to destroy all "class and caste legislation in the United States." Certainly that included school segregation statues. That was hopeful language, to be seized upon eagerly and exploited for all it was worth. And in the Senate, in particular, the Radical Republicans throughout the debate cast their argument in extremely broad terms, talking grandly of the Declaration of Independence, of the equality of man, of Lincoln's Gettysburg Address, and the like, and avoiding all questions of specific legislative and statutory consequence. Here, by all odds, was the best possible answer to a narrow construction of the amendment, although I fear I did not see it very clearly at the time.

The paper I prepared for the September conference was not adequate by any standard. I was trying to be both historian and advocate within the same paper, and the combination, as I found out, was not a very good one. I tried to draw conclusions which were at odds with the thing which most impressed me at the time—the damning modification of the civil rights bill in the House and its apparent identity in purpose with the 14th amendment. I was facing for the first time in my own career the deadly opposition between my professional integrity as a historian and my wishes and hopes with respect to a contemporary question of values, of ideals, of policy, of partisanship, and of political objectives. I suppose if a man is without scruple this matter will not bother him, but I am frank to say that it bothered me terribly. Howard K. Beale, a historian of distinction who attended the September conference and who, I discovered, had

become something of a Sumnerian idealist on the subject of the Negro, looking at Reconstruction in a radically different way than he had earlier viewed it in "The Critical Year," confessed to me that he felt something of the same dilemma.

At the New York conference, I came face to face for the first time with the men who were directing the school segregation campaign. The NAACP office had sent out a call to about 125 leading scholars in the country—historians, constitutional lawyers, political scientists, educators, and the like—and a great number of men, several of them first-rate professional figures, had responded. They included Robert K. Carr, then of Dartmouth College and now president of Oberlin; Horace Bond; Prof John Frank, then of the Yale Law School and now in private practice in New Mexico; Walter Gellhorn of the Columbia Law School; Milton Konvitz, the distinguished expert on civil rights; and historians Howard K. Beale, C. Vann Woodward, and John Hope Franklin. In all, some 40 or 50 academicians were in attendance, along with some 30 or 40 lawyers, some of the latter being associated with the various cases themselves; others, headed by Robert Carter and the redoubtable Thurgood Marshall, being drawn from the NAACP's legal staff.

The conference, held at the Press Club on 43d Street and with headquarters at the thoroughly desegregated Algonquin Hotel, was organized in a series of seminar discussions around the so-called scholarly papers which the five historians had prepared. I found myself in such a seminar with a group of NAACP lawyers, all of them heavily concerned with the central problem they would have to argue before the Court—the meaning of the Civil Rights Act, its relationship to the 14th amendment, and the intent of the 1st section of the 14th amendment itself.

To my relief, I found that the lawyers present did not at all resent the fact that I had exposed a considerable difficulty in the argument they would have to make before the Court. On the contrary, they obviously wanted me to clarify as far as possible the difficulties they would confront were John W. Davis and his staff as well prepared as they might be expected to be.

The central discussion swung around a basic question of strategy: ought the association's lawyers to use a generalized or a particularistic historical approach in their argument. Robert Ming, a Negro lawyer then in private practice in Chicago who had formerly taught law successively at Howard University and the University of Chicago, argued forcibly that the particularistic historical evidence favorable to the NAACP case was either so scanty or so unconvincing that sound strategy called for the abandonment of any attempt to make an argument basic on the framers' immediate historical intent. Dangerous as it was, he said, the Court's request ought to be bypassed and the case argued in terms of the approach Jay Graham had taken—the overall spirit of humanitarianism, racial equalitarianism, and social idealism which had dominated the rise of the abolitionist movement and which by implication thereby had determined the objectives of the Radical Republicans who had written the 14th amendment.

It was a powerful argument, but it had one serious weakness: it would not meet the attack of lawyers for the respondent school boards who might show, with damning particularism, the amendment's specific intent. Several of us therefore argued in reply that the NAACP's lawyers might find it possible to deal with the historical argument successfully in immediate terms. They would at all events, be obliged to attempt it or run the risk of incurring the Court's direct censure and loss of the case. Ming, a hard and forceful debater and an incisive legal logician, remained unconvinced. As for the other lawyers present, most of them appeared to be plunged into a state of vast uncertainty, both with respect to the historical problem they confronted and the basic strategy it would be best for them to adopt in the forthcoming arguments.

One side point about the conference is worth making: the conference cost the NAACP, Thurgood Marshall later informed the delegates, upward of $30,000. Apparently, it also cost more than the NAACP officials had bargained for, for on the last day they found themselves a bit short of the cash necessary to meet our expense accounts. Accordingly, Marshall took off for Philadelphia, whose Negro leaders, he said, had not contributed their share so far to the expenses of the big legal battle now underway.

In his own words, "I put the touch on those boys down there and they paid off." My recollection is that he raised nearly all the $30,000 on that single trip, but I am not sure of that. All I remember for certain is that he walked into the plenary session of the conference that last afternoon and paid us off handsomely, in bright new greenbacks on our expense accounts, with no ques-

tions asked. In a small way, it was a dramatic reflection of the extraordinary revolution in the Negro's economic and power status in American society that had been underway for the last 20 years, and which had been vastly accelerated by the Second World War. The whole conference, in fact, illustrated the way in which a new Negro elite, ably generaled by the lawyers of the NAACP, was leading its newly found economic power, money, and prestige to the great court battle now underway. A hundred years earlier, by contrast, in the Reconstruction battles over the Negro's status, the freedman had been little more than a helpless pawn in a battle between white politicians. Now the Negro was in command of his own fight for equality, marching on the Supreme Court with an army of lawyers, educators, technical experts, and the like, over which a Negro organization, the New York office of the NAACP, retained firm control.

I left the September conference expecting to have no more to do with the segregation cases beyond what I might read in the newspapers. Ten days later, early in October, however, I was surprised to receive a phone call from Thurgood Marshall. In the curiously winning manner so characteristic of the man, he informed me that since I wasn't doing anything anyhow, I might as well come on down to New York for 4 or 5 days and waste my time there. My help, he said with careful flattery, was needed very badly on the brief. My vanity thus touched to the quick, I came.

Reaching New York on a Wednesday evening in mid-October, I found assembled around the table the core of legal experts from the NAACP's staff, others who had been called in to assist them, and the lawyers from the several State and Federal cases which had come up to Washington from the lower courts. This time there were only about a dozen of us. I cannot recall them all, but notable were Marshall himself; Robert Carter, then assistant counsel of the NAACP legal defense fund and now general counsel of the NAACP; Constance Motley, another NAACP lawyer; Jack Greenburg, who, since Marshall's elevation to the Federal bench, has become general counsel of the NAACP legal defense fund; Louis Redding, the quiet little man who had lately won his case in the Delaware Supreme Court; Spottswood Robinson, now dean of the Howard University Law School; and Robert Ming, rather harsh, aggressive, and wonderfully sharp, of whom I spoke earlier.

For several hours they picked my brains on American constitutional history, beginning with Lord Mansfield's case and going on to Gong Lum and Gaines. It soon became clear that they did not expect soft answers. They wanted hard questions and hard answers of the kind they might encounter from the Justices and opposing counsel when the cases were argued before the Court in December.

There were several such conferences in the next five evenings. From time to time others joined the lawyers around the conference table. I cannot recall them all, but John Hope Franklin was present on most occasions, as was John A. Davis, a political scientist from City College, and Kenneth Clark, a psychologist from the same institution. The questioning was hard and sharp; essentially the lawyers seemed to be using me and Franklin, in particular, to educate themselves, and I soon sensed that the role I was expected to play was that of Devil's advocate, a foil, or fencing instructor to prepare them all for the main event.

Incidentally, if I had ever entertained any lurking white-man's suspicions of the intellectual adequacy of this group of lawyers, all but one or two of whom were Negroes, these men soon kicked it out of me. Without exception, they were razor keen, deadly at argumentation and, as far as a layman who knew some law could tell, thoroughly competent in their profession.

On the morning after the first evening conference of this sort, Marshall called me early and when I reached his office I found him and Robert Ming waiting for me. Marshall now informed Ming and me that he wanted us to sit down and hammer out a draft of a brief for the Supreme Court.

To this end he locked us up, so to speak, in an isolated suite of offices over at the NAACP's main headquarters on West 40th Street. Ming and I spent the next 3 days there, with no one else present but a stenographer, walking up and down, dictating, arguing, and orating to one another. The brief drafting was mostly Ming and comparatively little Kelly: in the first place, Ming knew how to draft a brief and I didn't; moreover, I found he had very positive ideas about what he wanted to say. My role, it appeared, was to challenge him repeatedly, to fight and quarrel with him, attack his history and constitutional law as unsound, and so on. Since being unpleasant comes naturally both to lawyers and academicians, we got on famously. Evenings, we went back to the general ses-

sions, which invariably lasted until long after midnight. At the end of 3 days we had a brief which Ming said would do.

After 5 days, I went home completely exhausted; again expecting to hear no more of the school segregation cases. But early in November, Marshall called me, informed me once more that I was wasting time in Detroit, and this time in effect ordering me to come down to New York for another 5 days.

This time a still different task awaited me. On a Thursday morning, I met Thurgood Marshall in his office, where we were joined by John Frank of the Yale Law School, a nationally known lawyer and legal historian and author of a number of leading monographs on the 14th amendment. Marshall informed the two of us that Ming's draft was fine as far as it went, but that it didn't go far enough. Ming had proceeded on the theory, earlier outlined here, that it would not do to get too far involved in specific historical detail with respect to framer intent and that the association's case might best be cast in very generalized terms with a deliberate avoidance of the particular. This tactic, Marshall now informed us, might get past two or three of the Justices for whom, it was clear, he entertained no very great professional regard, but it would darn well never get past Frankfurter or Douglas. "I gotta argue these cases," Thurgood said, "and if I try this approach, those fellows will shoot me down in flames."

And so in the next few days, using the research that numbers of scholars had done, we wrestled with the matter of adequate answers to the deadly question of the congressional intent in drafting and modifying the civil rights bill, its relationship to the Committee of Fifteen, Thad Stevens' and Howards' expositions of congressional intent, and so on. The central question, all three of us felt, was that damning speech by Bingham which had forced modification of the Civil Rights Act, and the almost equally damning speech by Stevens proclaiming that the purpose of the first section of the amendment was merely the constitutionalization of the Civil Rights Act. Surely John W. Davis would drive this sequence of events home; if he overwhelmed the Court with them, Marshall felt, the case might be lost.

I am very much afraid that for the next few days I ceased to function as a historian and instead took up the practice of law without a license. The problem we faced was not the historian's discovery of the truth, the whole truth, and nothing but the truth; the problem instead was the formulation of an adequate gloss on the fateful events of 1866 sufficient to convince the Court that we had something of a historical case. Never has there been, for me at least, a more dramatic illustration of the difference in function, technique, and outlook between lawyer and historian. It is not that we were engaged in formulating lies; there was nothing as crude and naive as that. But we were using facts, emphasizing facts, bearing down on facts, sliding off facts, quietly ignoring facts, and above all interpreting facts in a way to do what Marshall said we had to do—"get by those boys down there."

There was one optimistic element in all this, as Marshall pointed out: it was obvious, as I remarked earlier, that the Court was looking for a plausible historical answer. It needed merely to be convinced that it was possible to say that the idea of segregation might have had something to do with the amendment, that it was not utterly absurd to argue some connection, so that either a new declaration of historical intent or perhaps merely an abandonment of the old affirmation of original intent as set forth by Justice Brown in *Plessy* could be advanced without making the Justices look ridiculous. In other words, Marshall said, we didn't need to win a historical argument hands down, all we needed was a facesaving draw. "O nothin' to nothin' score," Thurgood put it, "means we win the ball game." I believe, by the way, that this was a correct interpretation of the Court's mood.

This may be the place to observe that it was in these conferences that I came to understand why Thurgood Marshall was such a cunning and powerful strategist in the campaign for Negro rights in America. The Saturday Evening Post a few years ago called him a charismatic personality; certainly he is all of that, for his dynamism, personality, magnetism, and charm are undeniable, while he radiates a tremendous sense of personal power. But I found even more interesting his slashing and mordant sense of humor, his profoundly moving sense of identity with the Negro's tragic role in America, and his tremendous moral commitment to the work in which he was engaged.

The sudden shifts of mood he displayed on occasion were nothing short of astonishing. One morning in his office, he related to John Frank of Yale and

myself, with tears in his eyes and a voice dulled with the cumulative grief of 300 years, the experiment of a leading sociologist with a group of little colored girls, who were given their choice of playing with two sets of dolls, one white or Caucasian, one black or Negro. Even at 3 years of age, he said, the little colored girls preferred the white dolls, describing the black dolls as "bad" and "not nice," and the white dolls as "pretty" and "good." As Marshall told the story, he seemed bowed down under an unbearable burden of tragedy. A few moments later, his ebullient hilarity restored, he good naturedly railed at his secretary's negligence, informing her in a voice deliberately weighted with excess Negro accent not to forget "who d' H.N. is around here," and he found immensely amusing my discomfiture at being told what "H.N." stood for. I shall not tell you here.

Sometimes Marshall could reveal a mood of sudden savagery and bitterness. Customarily he referred to the Mason and Dixon line as "the Smith and Wesson line." On one occasion he read with savage delight from an Iowa frontier paper which portrayed a local Negro community as a mass of illiterate apes. For him, he made clear, this epitomized the white man's attitude toward his people. On still another occasion at an evening session at which I found myself playing devil's advocate with a bit too much enthusiasm and lack of tact, Marshall stopped suddenly, and speaking into the growing silence around the table said: "Alfred, you are one of us here and I like you. But"—and this in a voice of terrible intensity—"I want you to understand that when us colored folks takes over, everytime a white man draws a breath, he'll have to pay a fine." A moment later, the good humor and charm returned. That same evening he told me in a mood of hilarious gaiety how his great-grandfather had managed to escape from slavery simply because he was, in Thurgood's words, so completely worthless that his grateful master carefully refrained from catching him again. "From all I know about my grandpappy," Thurgood said, "he was a real no good and his master was right."

Gradually, in the next 3 days, we hammered out a strategy. I like to believe that I played a major part in developing it, but every one of you knows how easily self-deceit functions in a situation of this kind; a little more objectivity tells me that probably we came to the basic idea together and that it had been implicit in the work of various of the legal and historical scholars who had put in so much spadework before now, probably more in the writings of Jay Graham and John Frank than anyone else. Briefly, the strategy we fell upon was to argue that Bingham had attacked Trumbull's civil rights bill not because he objected to banning segregation per se, but rather because he thought the powers of Congress inadequate, under the Constitution, to sustain such an enactment, so that a constitutional amendment would be necessary for this purpose. Thus by strong implication we made the 14th amendment actually a device for making legal that which Bingham attacked in the House debates on Trumbull's bill as hopelessly unconstitutional.

To put it differently, instead of equating the 14th amendment with the Civil Rights Act, we heavily emphasized the difference. The amendment, we told ourselves, had been necessary to accomplish a vast sweep of purpose far beyond the Civil Rights Act. Here we came down hard on Howard's announcement that the purpose of the amendment had been to abolish all class and caste in the United States. And we pounced on a phrase Jay Graham had dug up: Bingham, in defending the amendment in the House had indeed said Congress now was writing a constitutional provision, not drafting a statute; that statutes are writ sharp and narrow and specific, but constitutions are writ broad for ages yet unborn. In our minds' eye, Bingham almost seemed to be speaking for our purposes, saying to the Court in the 20th century that if your age, far beyond our span of time, sees in this amendment a new birth of liberty, it will be altogether legitimate for you to use it for that purpose.

This is the argument, essentially, that you will find incorporated in the historical portions of the NAACP brief as it went to the Court. This is the argument Marshall used in oral argument in answer to the questions from the Justices. At this point, incidentally, I should confess something amusing about myself: I am convinced now, that this interpretation, which we hammered out with anything but historical truth as our objective, nonetheless contains an essential measure of historical truth. History is art as well as fact; everyone in this room knows that the facts do not automatically arrange themselves without the historian's creative leap, which occurs in our craft as well as in the exact sciences, and in any event there are a considerable number of facts to

support what I shall call the Graham-Frank theory of the amendment. Four years ago, in New York, Howard K. Beale assured me that something of this sort was also his theory of the amendment in relation to segregation. While he conceded that it had not been written specifically to prohibit segregation, he believed that it had indeed been drafted deliberately to effect a revolutionary equality in the Negro's status, with the legislative and judicial details of the amendment's implementation left to the creativity of subsequent generations.

A good Freudian psychologist, I know, will be hugging himself with sardonic joy at this point, observing with self-satisfied glee that academic man obviously has as great a capacity for manipulating reality by myth in order to preserve his personal integrity as has any ordinary day laborer—perhaps an even greater capacity because of his superior mythmaking abilities. I do not know.

There is not much more to the personal side of my story. I came down to New York once again in early December. By that time, Marshall, Carter, Greenberg, Motley, Robinson, and the other NAACP lawyers had polished the brief into something like a finished document suitable for the approaching Court argument. I read it over, subjected it to criticism in two or three lengthy conferences, spent a day in the Bar Association Library picking up appropriate quotes and tidbits for the oral arguments. And that was all. A few days later, in mid-December, the Court heard the final arguments of learned counsel. The New York Times stories seemed to indicate that matters had gone well for what I now called "our side." In May came the now historic decision in *Brown* v. *Board* in which Mr. Justice Warren, speaking for a unanimous Court, threw out *Plessy* and announced that henceforth State statutes supporting school segregation were declared to be unconstitutional under the 14th amendment. The decision came just 97 years 2 months and 10 days after the Court's opinion in *Dred Scott* v. *Sandford*, in which Taney had declared that the Constitution and the American legal order thereunder made Negroes so far inferior that they had no rights which a white man was bound to respect.

It was apparent at once that Marshall's theory of a "draw bout" on the question of 14th amendment history had been altogether correct. Although John W. Davis and his cohorts had counterattacked NAACP history in a brief which shrieked in outraged indignation that opposing counsel had attempted a vertiable rape upon Cleo's virtue, the Court obviously had found what it wanted. Chief Justice Warren's opinion noted briefly that there was a general disagreement among opposing counsel and historians about what the amendment as of 1866 had been intended to mean, and thereupon proceeded to junk the historical approach entirely and instead to settle the question of segregation on straightout sociological ground: racial segregation in the schools, in the context of the 20th century, bred social inferiority for the Negro and must therefore be outlawed.

A little commentary is in order before closing. In the first place, on the surface at least, Thurgood's black and white dolls won the case, not the historians. The Court settled the case by legislating upon the meaning of equality in mid-20th century. It did not overturn *Plessy* as bad history or bad law; instead, it simply consigned the case to the limbo of contemporary irrelevance. This does not mean that the historical argument was without meaning in the Court's opinion. It seems probable, at least, that had historical inquiry resulted in a general inability on the part of the NAACP to make a plausible case—shown, in short, that the 14th amendment clearly and obviously had not been intended to touch segregation—the Court's embarrasment would have been great enough to cause it to put over the critical decision to discard segregation under the amendment, at least for a time. But the historians had produced at least the "draw" that Marshall and his colleagues had asked for. It was all they needed in order to win. So we historians can assure ourselves, I think, that we had something to do with the victory. Thurgood, at all odds, presently wrote some of us letters of thanks, assuring us that enlisting the history profession on his side had been the NAACP's smartest move in the whole complicated case.

Another major legal technique—a legal absurdity, but one developed by the Court itself—undoubtedly contributed to the victory. This was the Court's decision to separate its fundamental finding that school segregation violated the 14th amendment from the actual implementation of that finding. The May 1954 decision carefully made that distinction, and it paved the way for the "all deliberate speed" order of a year later. The all-deliberate-speed order on its face was a logical, constitutional, and legal absurdity. The Court, in effect, was applying equity conceptions to the constitutional rights of individuals, a heresy

hitherto unknown to the law. In effect it said, "The Constitution of the United States gives you certain constitutional rights with respect to desegregated schools. But you cannot have those rights at present, although some of you can have them after a while." Legally, this was nonsense; in effect it denied rights to which the appellant children were categorically entitled. To put it differently equity settlement historically applies to conflicts of vested interest, not constitutional guarantees of the rights of citizens as against the state.

Yet the application of equity conceptions to the Court's finding—constitutionally absurd—was doubtless also another fundamental requirement in the Court's unanimous decision in *Brown* v. *Board*. The resultant stream of court orders have been appaling enough in the problem of enforcement, for in substance the Court had pronounced upon the necessity of a revolution in the southern social order. But without resort to equity gradualism, the practical absurdity of the revolutionary pronouncement would have been so great as to have produced a judicial recoil—and a probable settlement of the five cases along the narrow lines of the Delaware decision—that the schools in question had not succeeded in meeting the requirements of "separate but equal" without overturning the *Plessy* opinion.

Even so, nine Justices, hitherto committed more emphatically than any of their recent predecessors to the philosophy of a judicial self-denying ordinance, had legislated the Court into the most difficult position occupied by that august tribunal since the *Dred Scott* decision. The Court's position with respect to the latest phase of America's tragic dilemma—the role of the Negro in America—was strikingly similar to that which it had occupied in the crisis of a hundred years earlier. To a constitutional historian the parallels were impressive. In both cases, the development of a profound schism with respect to the Negro's role in American society had developed in the Nation at large, a schism which split the country to a great degree, at least, along sectional lines between North and South. In both instances the Court yielded to the temptation, wisely or not, to pronounce upon constitutional law widely enough to attempt to establish a constitutional foundation upon which the National Government and the States might thereafter construct something like an integrated national policy.

In both instances, also, the Court undoubtedly was legislating—that is, acting in self-conscious consideration of the social and political consequences of its findings and deliberately shaping constitutional law to that end. And in both instances, the resultant decision stirred up a hornet's nest and contributed to protracted constitutional crisis, as one entire section of the Nation pronounced itself in revolt against the constitutional implications of the decision, and declared a general unwillingless to abide by it, or to translate it into living practice in its social order. In the Lincoln-Douglas debates, Lincoln came close to talking outright nullification of the Court decision, in language strangely similar in legal doubletalk to that of the present-day Virginia Committee on Constitutional Government with its curious and pathetic attempt to reincarnate the doctrine of interposition.

Yet the Court's position, beneath the surface, is far more powerful than it was a hundred years ago. In 1857, the Court chose the side immediately dominant in a political sense—but it nonetheless blundered terribly in failing to estimate correctly the dynamics of the power drift in the country. Within 10 years, as a consequence, it found the whole of the *Dred Scott* case swept away—by war, by judicial appointment, by legislation, and by constitutional amendment.

This time, by contrast, all the signs indicate that the Court has chosen the winning side. The sectional power drift, the power drift in class relationships, and the party power drift—that is, the critical role of the Negro in the politics of several of the decisive Northern States including Michigan, Ohio, Illinois, and New York—all point in the same direction, toward the eventual fulfillment, not the repudiation, of the Court's great decision.

So does the progressive and dynamic alteration of the national value system with respect to the Negro's role in American life. In 1857, the Court spoke against the American conscience, certainly the conscience of most of the North. In 1954, the Court spoke for the American conscience, not only for nearly all the North but apparently for a great many in the South as well. The Court's power position—its ability to defend its version of the national constitutional myth, in other words, is vastly superior to what it was a hundred years ago. It has had not only the historians, but what is far more important, the stream of history on its side. That this stream will reverse itself has become inconceivable. In Thomas Wolfe's words, "You can't go home again." Perhaps it was

a profound perception of that fundamental sociological fact which in reality governed the Court's now celebrated excursion into its third great historic attempt to legislate upon the role of the Negro in America.

Senator JOHNSTON. This adjourns the hearing temporarily to see whether or not we will bring some other witnesses in.

Senator KEATING. Mr. Chairman, would it be appropriate to inquire what other witnesses it is anticipated to call?

Senator JOHNSTON. It seems like there is adverse testimony here and we will have to see to determine whether this had happened.

Senator KEATING. Have we made efforts to try to find this Mr. Kelly heretofore?

Mr. LIPSCOMB. We had no reason to locate Dr. Kelly until the witness took issue with what Dr. Kelly said.

Senator KEATING. Now Mr. Chairman, any experienced lawyer would never make a statement like that. The lawyer has read from a statement by Dr. Kelly.

The appropriate way to prove these facts would have been by Dr. Kelly appearing here as a witness in opposition to Judge Marshall if he cared to do so. Not to read from some speech which he is alleged to have made somewhere.

Senator JOHNSTON. The only thing that happened here, as I see the facts, is that the attorney has asked the witness on the stand if this did happen and he denies it.

Now, then, that does raise a question as far as Dr. Kelly is concerned whether or not Dr. Kelly will back up what he said here in this, said in this article he put out. He didn't know that Judge Marshall would deny what Dr. Kelly said or whether he would agree with it until it was brought before him, and on top of that, those witnesses that he has testified in regard to the newspaper articles; we have tried to locate them. I think you want to get them, too; isn't that right?

Mr. LIPSCOMB. Yes.

Senator JOHNSTON. I will call the meeting of the subcommittee. I am just one. I will call the subcommittee together, the three of us, and I will lay this before them to see what they want to do. I think that is the logical thing for me to do as one member here of the committee, and that is what I am going to do.

Senator HART. Mr. Chairman, if I could, neither Senator Keating nor I are members of this subcommittee.

Senator JOHNSTON. You are visitors. I am glad to let you make a statement, but just remember you are not on the subcommittee.

Senator KEATING. But we are on the full committee.

Senator JOHNSTON. But you are not on the subcommittee.

Senator KEATING. It will be in the hands of the full committee unless this meeting is quickly closed. This is a ridiculous procedure and an unlawyer-like procedure, and it will be my intention to raise the problem before the full committee.

Senator JOHNSTON. You have a perfect right to do that, but as far as the subcommittee, we want to get the facts before the full committee. I don't know what the man who wrote the articles in the newspaper will come in and say.

I think in all fairness to all concerned they should have the right to come here to say whether or not they wrote something that was untrue;

that is the only thing that is before me, and I can't act any further.

Senator HART. Mr. Chairman, Senator Keating and I are both grateful you have permitted us to sit, although not members of the subcommittee.

Senator JOHNSTON. Glad to have you.

Senator HART. The point made by Senator Keating is one that Senator Carroll wanted me to reaffirm also.

I share with Senator Carroll and Senator Keating the belief when historians note procedures in the Senate, this will provide a conspicuous chapter, and the sooner we terminate it the better for the Senate and this committee.

Judge Marshall doesn't have a thing to worry about. His reputation in American jurisprudence is established. We will indict ourselves if we fail to acknowledge it. That is our problem, and the sooner we do it, the better.

Senator JOHNSTON. I think there are some other things that might be referred to the American Bar Association to see just how he has acted in the past in regard to soliciting cases in a way, whether or not he has been connected up with that, whether or not practicing law in New York without a license, whether or not something should be said about that.

All those things are before the subcommittee and the full committee.

Mr. MARSHALL. Mr. Chairman, if I may respectfully note, I so far have heard not a single word that said I was connected with any of this soliciting business.

Senator JOHNSTON. You have been in a lot of meetings where it grew out later there was soliciting; there is no question about that.

Mr. MARSHALL. Well, I assume, Mr. Chairman, that that is your opinion.

Senator JOHNSTON. I think we have reached the point that a lot of the meetings where you were and later that group that you were in, the lawyers that you had employed working with you and under you were doing work in that field. That is the only thing we have. We want to clear it up.

Mr. MARSHALL. I am perfectly willing to have anything cleared up on the record; the only meeting I know of was one meeting, and as a result of that Mr. Bunkley and Mr. Durham, that is all I remember that was testified to here, one meeting.

Senator JOHNSTON. Of course, the subcommittee as far as something has been said about employing an attorney, he is on the full committee, the full committee sent him to the subcommittee to do this work; isn't that true?

Mr. LIPSCOMB. Yes, sir.

Senator JOHNSTON. So we will have to recess this meeting and I will call the subcommittee together as quick as I can get them, and then see how to proceed.

I hope we can expedite it in the next day or two. So far as I am concerned, nobody wants to get rid of it any more than I do, one way or the other.

So we will recess subject to the call of the subcommittee.

(Whereupon, at 11:15 a.m., the subcommittee recessed subject to call of the Chair.)

NOMINATION OF THURGOOD MARSHALL

FRIDAY, AUGUST 24, 1962

U.S. SENATE,
SUBCOMMITTEE ON NOMINATIONS OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee (composed of Senators Johnston, McClellan, and Hruska) met, pursuant to recess, at 10:30 a.m., in room 2228, New Senate Office Building, Senator Olin D. Johnston presiding.

Present: Senator Johnston.

Also present: Senators Hart, Keating, and Javits.

L. P. B. Lipscomb, Esq., member of the professional staff, Committee on the Judiciary.

Senator JOHNSTON. The committee will come to order.

The attorney will call the first witness.

Mr. LIPSCOMB. Dr. Alfred H. Kelly, will you please come up to the microphone.

You are Dr. Alfred H. Kelly, professor of history at Wayne State University, Detroit, Mich.?

TESTIMONY OF ALFRED H. KELLY, PROFESSOR OF HISTORY, WAYNE STATE UNIVERSITY, DETROIT, MICH.

Mr. KELLY. That is right, sir.

May I make a request here? I would like two requests, sir. I would like to be sworn in the first place. Don't you have a right to be sworn if I am going to testify?

Senator JOHNSTON. Raise your right hand.

You swear the evidence you give at this hearing will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. KELLY. I do, sir.

My second request is that I have a statement of about 10 minutes which I should like to read, if the committee can indulge me.

Senator JOHNSTON. We are willing to let you read any statement, but the question before us here today was just concerning whether or not a certain statement that you made was true, that you made it or not.

Mr. KELLY. I am perfectly willing under oath to testify to any statement you ask me about, Senator, but I would like to read my statement since it is relevant to the helpful purpose of this hearing and relevant to my purpose in being here.

Senator JOHNSTON. Proceed, then.

Mr. KELLY. Thank you, sir.

To the subcommittee of the Senate Judiciary Committee.

First, let me emphasize very strongly my firm belief in the integrity, honor, and decency of Judge Thurgood Marshall.

It is my opinion that he is a man of the highest professional standards and ideals, and that he is a credit to the American bar and to the Federal judiciary.

I had the privilege of working with him and observing him, at intervals, over a period of some months, while he was engaged in the preparation of the briefs in the now-celebrated case of *Brown* v. *Board.*

In that time I at no time heard him give expression to any unprofessional ambition, standard, ideal, or objective. If the paper I read last December to the American Historical Association conveyed to anyone the faintest implication to the contrary, I can only say that this was not my intention and it is certainly not Judge Marshall's responsibility. In fact, a good portion of that paper was devoted to expressing my open admiration for Marshall's remarkable personality and vast abilities. The paper can be construed in no other fashion, unless it is misunderstood, misread, or quoted out of context.

Let us come now to a particular point in the paper which may have been construed, quite honestly by some people, as touching unfavorably upon Judge Marshall's professional ethics. The paper speaks of the preparation of the *Brown* brief as involving, among other things, the development of a very ex parte argument.

The phrase used was "emphasizing facts, bearing down on facts, sliding off facts," and so on.

Now it must be remembered that this paper was prepared for an audience of professional historians. The analysis attempted to emphasize the profound difference in the way a lawyer develops an argument in a brief, making the best he can of his facts by careful selection, emphasis, quiet omission, and so on, from the way a historian handles evidence.

It is a vastly different technique than that which historians use, I assure you. The argument in the brief was not history; it was advocacy. It was, in short, a lawyer's brief, and the paper attempted to make that clear to an audience of historians.

This does not mean that the brief falsified facts, that it lied, or even that it necessarily reached false conclusions. Within a large sense, most Reconstruction historians believe it did not, again as the paper of last December tried to make it clear.

Now the important point here is that within the ethics of the legal profession, Thurgood Marshall's professional obligations required him to handle his available evidence in this fashion.

Again, he was functioning as an advocate, not as a historian. As one prominent lawyer in Michigan told me:

> If I developed an argument for a client in any other fashion, I would be derelict in my duty.

I have discussed this point with a great many responsible members of the bar in the last few years and never did inquiry elicit other than emphatic agreement upon this point.

In all probability, there is no lawyer now present in this room who disagrees with this proposition. In short, to imply that because Marshall and his professional associates did not write professional history when they prepared their brief in *Brown* v. *Board*, that they were

thereby guilty of professional malfeasance, is grossly to misconstrue the modus operandi of the legal profession.

It may be worth while to observe, by the way, that the brief prepared by the late Mr. John W. Davis for the respondents in *Brown* v. *Board* is, from a technical historical point of view, every bit as far from a balanced constitutional history of reconstruction as is the NAACP brief.

Again, Mr. Davis' brief was not history; it was advocacy. Yet no one has indicted him for having argued his case adequately for his clients. No doubt he would have been open to a charge of professional dereliction and malpractice had he done otherwise.

Now as to possible factual discrepancies between certain of the details presented by Judge Marshall in his recent testimony before this subcommittee and the points raised in my paper of last winter: Not a one of these so-called discrepancies, if they are that, has any significant substantive quality or reflects in any way on Judge Marshall's character. They are trifling—one is tempted to say piffling. However, let me dispose of them as best I can.

First, Judge Marshall denies that he left the now-famous September conference to raise money in Philadelphia. So be it. I used the phrase, at one point in this account, "it is my recollection that * * *." I had intended to check this point specifically with NAACP officials in New York before my paper reached the public domain; unauthorized and unforewarned publication of the paper by the Washington Star made that impossible.

I am sure Judge Marshall's knowledge on this point is better than mine, and I cheerfully accept any correction he may make.

Let me touch also on his point in testimony that "we did not buy his argument * * *" [meaning Kelly's argument in the original paper of September 1953].

This is perfectly correct.

In my paper of last December, I myself made this point very clearly and emphatically. In fact, the argument finally used in the brief was developed and refined after two or three tentative earlier arguments had been set up and rejected.

The basic final historical argument, which I described last December as containing a measure of actual historical truth, was the work of a great many minds. If it was even in part mine, I am very proud. But Judge Marshall is in a better position than anyone else to assess the contribution of the numerous persons who lent their efforts to the preparation of the brief last fall.

Finally, I observe with some astonishment and incredulity that some serious attention has been paid to a Marshall anecdote incorporated in the 1961 paper.

The paper, in the course of relating a series of anecdotes, tells how Marshall on one occasion assured me in a moment of humorous irritation that "when we colored folks take over, every time a white man draws a breath, he'll have to pay a fine."

Judge Marshall has said solemnly that this does not represent his philosophy, that he does not even recall making that remark. I do recall the remark. But the remark was mordant humor, given exclamation by a man possessed of a powerful sense of humor, and who expresses something of the excitement of verbal exchange in humorous

hyperbole of this kind. The paper related this incident merely as one of a series of anecdotes which attempted to portray something of the nuances and coloration of a truly remarkable personality. To lift the remark out of context and treat it as a threat or even a philosophical observation is absurd, even grotesque, in its bizarre distortion of reality.

It may be worth observing here that I have also heard Marshall express personally his powerful conviction that communism and Marxism are fatal pitfalls for the American Negro which must be avoided like the plague. I have heard him speak also of the extreme care which he and other NAACP officials have used to keep their organization free of Communist and Marxist contamination. On more than one occasion Marshall in my presence bespoke his intense conviction that the destiny of the American Negro is to be fulfilled in terms of the American constitutional system.

What he wanted for the Negro, he made clear, was first-class citizenship. I have heard him say, "We want no more; we will not take less."

That, gentlemen of the Senate Judiciary Committee, is Judge Marshall's philosophy as I have understood it.

Let me say in closing that I am proud to have known Judge Marshall and proud of my small contribution to the *Brown* brief. I believe this case involved one of the great steps forward in the fulfillment of the American democratic dream.

It is my conviction that Thurgood Marshall's victory in *Brown* v. *Board*, consistent as it was with the highest ethics of the legal profession, has already earned him a permanent position of honor in American history. And as a constitutional historian, I believe strongly that in his new capacity as a Federal judge, he will prove to be an outstanding and preeminent judicial figure.

Gentlemen of the subcommittee, I thank you very much for your patience.

Senator JOHNSTON. Dr. Kelly, I believe you are a historian; is that true?

Mr. KELLY. Yes, sir; a historian and perhaps a constitutional expert.

Senator JOHNSTON. And when you write, you try to write the truth; isn't that true?

Mr. KELLY. Yes, sir; history consists of both fact and interpretation, however. Interpretation in a certain sense is a constructing art.

Senator JOHNSTON. I believe you are not a lawyer; is that true?

Mr. KELLY. I am not a member of the bar, sir. I spent 30 years in studying the constitutional system, if I am not an expert in this system I have been sailing under false pretenses with the Michigan Constitutional Convention which has employed me the last year.

Senator JOHNSTON. You do not have a license to practice law; isn't that true?

Mr. KELLY. No, sir; I do not.

Senator JOHNSTON. And you have not attended any law school; is that true?

Mr. KELLY. It is true that I have no degree from a law school. It is not true that I have not attended law schools; if you mean that I have as a student at the University of Chicago, I spent a great deal of time studying law there.

Senator JOHNSTON. I believe you were employed in preparing the brief in the *Brown* case; is that true?

Mr. KELLY. That is correct. The word "employ" is subject to a certain interpretation, but——

Senator JOHNSTON. You were paid for it, were you not?

Mr. KELLY. I was paid for a professional paper. I came down to New York repeatedly without pay. I later received a small gratuity which was in the nature of a gift and not contractual, after the whole thing was over.

Senator JOHNSTON. You studied the historical background in order not to inject the law into the case, but to bring in past history; is that correct?

Mr. KELLY. Yes, I guess so, Senator, although I have a little trouble separating the two things.

That is to say the whole body of constitutional history here was also a history of constitutional law.

So, I am not quite sure where I draw the line on this, but in a loose way I guess that is right.

Senator JOHNSTON. I am going to turn you over to the attorney who will now question you.

Mr. KELLY. Thank you, Senator.

Mr. LIPSCOMB. Doctor, it is not my purpose to argue *Brown* v. *Topeka*. But as a historian as revealed by this paper——

Mr. KELLY. Could you speak a little louder, Mr. Lipscomb, I can't hear you.

Mr. LIPSCOMB. As a historian, you did make a very comprehensive study of this particular era in our history that involved the adoption of the 14th amendment.

You did come to the conclusion after your study that there was nothing in the contemporary history of the writing of the 14th amendment that indicated the framers of the 14th amendment had any purpose to write into it the integration of the public school system.

Mr. KELLY. No, sir; I never reached such a conclusion; that is not a correct statement of my writings under any circumstances.

If you will refer to the paper, which I read before the American Historical Association last winter, if I have a copy of it here, if you do, I can show you pages in which I make statements which are precisely opposite to that.

If you will look in the Michigan Law Review for September 1956, you will see a paper published there under my signature, and with a reference to my work in *Brown* v. *Board* in which I argue the case as against a man in the Harvard Law School to the contrary.

Mr. LIPSCOMB. And you do not think that——

Senator JOHNSTON. Just a minute.

I have been passed a note up here that Senators Keating and Javits and Long are fixing to offer an amendment on a House-passed bill now in the Senate, one that I am opposed to and I will have to be there as chairman of that subcommittee.

If they don't notify me that they are not going to take that amendment up in the Senate, I will have to adjourn this committee.

Do you know anything about it, Mr. Keating?

Senator KEATING. I certainly do, and the chairman's statement is quite inaccurate.

Senator JOHNSTON. It has been passed to me.

Senator KEATING. I have had a similar message, and I am very much interested in that amendment and I am happy to stay right here and not have this proceeding in any way interrupted. The bill before us is the Philippine war claims bill on which I have long stated, as has Senator Long, that we would offer an amendment. They want to conduct a colloquy on the floor which will result in a statement by the majority leader that he will bring up some other bill which we can attach our amendment to rather than this one, and we do not propose to offer the amendments on this bill and I have told them they can go ahead with their colloquy in my absence.

If the chairman feels he should be there, I would suggest we take a 10- or 15-minute recess. I would certainly not want to interfere with this hearing.

Senator JOHNSTON. As you know, we had a colloquy on the floor a few days ago concerning a matter similar to this, and I think that my side should be presented there as well as yours.

That is my position and I think——

Senator KEATING. My side is not going to be presented there; I am sitting right here.

Senator JOHNSTON. I know, but you will have others that will be presenting.

Senator KEATING. None of the three you have mentioned. Senator Javits is not in town. Senator Long cannot be reached.

Senator JOHNSTON. I understand that. Long—I talked with him last night, and he had agreed not to take this up. This was passed to me at 10 : 45. Sent from the Senate.

Senator KEATING. I don't know who could have handed you any paper like that. We both agreed not to.

Senator JOHNSTON. I didn't know a thing about it. We will proceed, then, until we hear something from the Senate.

Senator KEATING. All right.

Senator JOHNSTON. Go ahead.

Mr. LIPSCOMB. Mr. Chairman, the entire substance of Dr. Kelly's paper has been made a part of the record as exhibit 31 of the hearings; the contents of this paper insofar as the subject matter that was concerned in this series of conferences speaks for itself, and it is not my intention when I called this witness to go into an argument so far as subject matter is concerned regarding the 14th amendment, and I would just say that the paper speaks for itself in this regard and so far as Dr. Kelly's position in regard to this matter is concerned.

Approximately how much time, Dr. Kelly, did you spend in New York working with the attorneys and professors in preparing the brief?

Mr. KELLY. Well, I think I can answer that very accurately, Mr. Lipscomb. I was down in New York for that celebrated conference of about September 25, 1593. I was there from Friday morning until Sunday afternoon.

On or about the 15th of October, I was in New York for 4 more days at Mr. Marshall's invitation.

On or about the 2d of November I was in New York for another 4 or 5 days at Mr. Marshall's invitation.

On or about the 1st of December I was in New York for another 2 or 3 days at Mr. Marshall's invitation.

That is the sum and substance of it.

Mr. LIPSCOMB. It was during that course of time that you had this contact with Judge Marshall that gave you the opportunity to make the observations that you made in your paper?

Mr. KELLY. That is right.

I spent a great deal of time with him at this time. We had lunch together, dinner; I heard him talk. I watched him. I was fascinated by him. I gained enough impression of him to be able to make observations about his personality.

Mr. LIPSCOMB. At page 22 of your paper you describe a scene that occurred one morning in Judge Marshall's office that he related to Prof. John Frank of Yale and myself.

Mr. KELLY. I see the quote. This reads:

One morning in his office he related to John Frank of Yale and myself, with tears in his eyes and a voice dulled with the cumulative grief of 300 years, the experiment of a leading sociologist with a group of little colored girls, who were given their choice of playing with two sets of dolls, one white or Caucasian, one black or Negro. Even at 3 years of age, he said, the little colored girls preferred the white dolls, describing the black dolls as "bad" and "not nice," and the white dolls as "pretty" and "good."

Is that a correct summary of Judge Marshall's description of the dolls?

Mr. KELLY. I remember the incident clearly. It is.

Mr. LIPSCOMB. And you add:

A few moments later, his ebullient hilarity restored, he good-naturedly railed at his secretary's negligence, informing her in a voice deliberately weighed with excess Negro accent not to forget "who d' H.N. is around here," and he found immensely amusing my discomfiture at being told what "H.N." stood for. I shall not tell you here.

Is that correct?

Mr. KELLY. I remember the incident. I remember, by the way, in Judge Marshall's testimony of the other day, he says he never yelled at his secretary. I wish to call the committee's attention to the fact that the statement doesn't say he yelled at his secretary. It says, "He good-naturedly railed at his secretary."

It is not the same thing as yelling at her.

Mr. LIPSCOMB. Later, you remarked:

Customarily he referred to the Mason and Dixon line as "the Smith and Wesson line."

Mr. KELLY. I heard him make that reference more than once.

Senator KEATING. Mr. Chairman, would you let me intervene to admit that I was in error?

I have just stated that Senator Javits was not in town today and he walked in the door, which makes it a little embarrassing to me, I am sure he will confirm.

Senator JAVITS. I was out of town.

Senator JOHNSTON. I have just been told from the cloakroom and it says that Senator Javits was talking on the floor. Then I get this next note that says that Mr. Art Kuhl of the Foreign Relations called and said they are not going to offer the amendment which deals with Trad-

ing With the Enemy Act legislation, so you can go on with your hearing.

Senator KEATING. That is right. That sets the record straight.

Senator JAVITS. I thank the chairman for allowing me to sit in on this hearing.

Mr. LIPSCOMB. Next you state:

> On one occasion he read with savage delight from an Iowa frontier paper which portrayed a local Negro community as a mass of illiterate apes. For him, he made clear, this epitomized the white man's attitude toward his people.

Is that a correct statement of the position in regard——

Mr. KELLY. I remember the specific incident. I think if I were to work this paper over at this point, I would change that sentence and I would make it say, "For him he made clear this epitomized one vein in the history of American culture of the white man's attitude toward his people."

I remember the incident; I remember the pleasure that he took with reading it. I even remember the figure of speech that occurred in the frontier newspaper which was pretty horrible, and should have, I think, aroused any decent man to a sense of horror.

Mr. LIPSCOMB. And the final quote that was at issue here you introduce in this language:

> On still another occasion at an evening session at which I found myself playing devil's advocate with a bit too much enthusiasm and lack of tact, Marshall stopped suddenly and speaking into the growing silence around the table said: "Alfred, you are one of us here and I like you. But"—

and you interpolate—

> and this in a voice of terrible intensity—

and the quotation continues—

> "I want you to understand that when us colored folks takes over, every time a white man draws a breath, he'll have to pay a fine."

Is that correctly reported?

Mr. KELLY. The incident is correctly reported. I have already in my statement to this committee described that I remember the incident specifically. I think it can be given meaning only within the context of this man's sense of humor, but the incident is perfectly correctly reported

I think it is a gross test of misinterpretation if the committee is to assume this is an expression of philosophy. It was a gesture of annoyance, a legpulling, a needling, if you want. It was not an expression of philosophy.

To interpret it so I think is to pull it completely out of the context of a series of remarks of Mr. Marshall's personality.

Mr. LIPSCOMB. Have I not read this particular portion of your paper in exact sequence?

Mr. KELLY. You have indeed, sir.

Mr. LIPSCOMB. Which you have appearing in your paper?

Mr. KELLY. You have, sir. You have, of course, omitted from the paper those portions which in the aggregate would give an interpretation in the aggregate of Mr. Marshall's personality. You are engaged in an ex parte reading of the paper, if I can put it that way.

Senator JOHNSTON. Who did you prepare this paper for? I think we should get that into the record here.

Mr. KELLY. It was the annual dinner address delivered to the Mississippi Valley Historical Association which is an associated group of the American Historical Association at the annual meeting of the American Historical Association in December 1961.

Senator JOHNSTON. I think that is all.

Senator HART. Traditionally when a witness appears before a committee from the State of a member of the committee, he is presented to the committee by the member.

Senator JOHNSTON. I didn't know you wanted to present him.

Senator HART. Indeed, no. I intentionally broke with the tradition and for a purpose. I knew the circumstance under which Dr. Kelly was appearing, and I am doubly pleased that I didn't introduce him. I just want the committee to know that Alfred Kelly is a very distinguished citizen of Michigan, a very constructive one, a very concerned one. He is an eminent American historian. Once he spoke for me when I was not able to attend a meeting. I was thrilled at what he said then. He spoke for me this morning, too, and I was thrilled again.

Senator KEATING. Would the Senator yield?

I simply want to congratulate the distinguished Senator from Michigan on having a constituent who is so clear and forthright and concise and helpful as Dr. Kelly.

Dr. Kelly, you have contributed a great deal to this hearing and set in proper context some statements which were farfetched when they were first offered.

Thank you.

Mr. KELLY. Thank you, Senator.

Senator JOHNSTON. I would like to say, Dr. Kelly, your whole paper is put into the record.

This is not just part of it put in without the other. So it is all there for the record to bear out just what you said at that time at this meeting.

Mr. KELLY. Thank you, Senator; I appreciate that.

Senator JOHNSTON. You should know that.

We certainly thank you.

Mr. KELLY. Thank you, Senator; I appreciate appearing here.

Senator JOHNSTON. Call the next witness.

Mr. LIPSCOMB. Paul Molloy.

Senator JOHNSTON. Since we swore one witness, we had better swear the next, so raise up your right hand, please.

Do you swear the evidence you give before this subcommittee to be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. MOLLOY. I do.

Senator JOHNSTON. Have a seat.

Mr. LIPSCOMB. Mr. Molloy, where are you presently employed?

TESTIMONY OF PAUL MOLLOY, COLUMNIST, CHICAGO SUN TIMES, CHICAGO, ILL.

Mr. MOLLOY. With the Chicago Sun Times in Chicago, Ill.

Mr. LIPSCOMB. In what capacity?

Mr. MOLLOY. I am a columnist.

Mr. LIPSCOMB. Have you within recent times won several awards for your newspaper work?

Mr. MOLLOY. This is a pleasantly embarrassing moment, but, yes.

Mr. LIPSCOMB. What were the awards?

Mr. MOLLOY. Well, there were several. The two perhaps that I might mention were I won the 1960 National Headliner Award as the Nation's outstanding critic, and last year I won the Festival of Leadership Award as Chicago's outstanding journalist.

Mr. LIPSCOMB. How many years have you been with the Sun Times?

Mr. MOLLOY. Slightly over 6 years now.

Mr. LIPSCOMB. Where were you employed on or about February 1956?

Mr. MOLLOY. 1956?

I was employed in Memphis, Tenn., with the Memphis Commercial Appeal, a morning newspaper.

Mr. LIPSCOMB. What was your newspaper experience prior to your employment with the Commercial Appeal?

Mr. MOLLOY. I had gone there from Time magazine in New York. I had been with Time magazine about 2 years.

Mr. LIPSCOMB. How long were you with the paper in Memphis?

Mr. MOLLOY. Approximately 3 years.

Mr. LIPSCOMB. In the hearings of the subcommittee that were conducted on Friday, August 17, 1962, there were quotations made a part of the transcript from an article or news story that you wrote on February 3, 1956, in the Commercial Appeal, Memphis, Tenn.

I hand you herewith a photostat of this particular news story and ask you if you were the author of it?

Mr. MOLLOY. I didn't hear the question.

Mr. LIPSCOMB. I will ask you if you were the author of that particular story which appears in the record as exhibit 29?

Mr. MOLLOY. Yes; I was.

Mr. LIPSCOMB. What particular meeting were you covering on that day?

Mr. MOLLOY. If I recall, it was an evening meeting addressed by Mr. Thurgood Marshall to a group of Negro people in Memphis and I imagine from the surrounding area.

Mr. LIPSCOMB. Do you recall whether you wrote this account from a prepared manuscript that was given to you by the speaker or whether you were just reporting his words as they were delivered?

Mr. MOLLOY. It is difficult for me to state specifically whether I reported this from a text or from notes. Of course I was present, text or not. I might volunteer the thought, however, that I don't believe that Mr. Marshall had a text. I believe that I covered this from notes. I am not sure of this, but I think that I covered it from notes.

Mr. LIPSCOMB. In those portions of this particular story where you have quoted Mr. Marshall verbatim, are those quotes true and correct?

Mr. MOLLOY. I would have to say that they are.

Mr. LIPSCOMB. Were you given any instructions or was there any indication on the part of the paper by which you were employed that you should write a slanted story?

Mr. MOLLOY. Under no conditions; never.

Mr. LIPSCOMB. And this is a true and accurate account of this particular meeting and the speech that was given by the chief speaker?

Mr. MOLLOY. To the best of my recollection, it is, sir.

Mr. LIPSCOMB. The one portion of your story contains this quote on the part of the speaker, the nominee here:

> We've got the other side licked. It's just a matter of time. The period of peace and quiet has passed. Whichever State continues to defy the law will have to answer in court. We will finish the fight we started in 1953 and not for one moment will be deviate from our tactics and our goal. The NAACP doesn't need lawsuits any more, because we've got the law, religion, and God on our side * * * and the other side is putting all its faith and hopes in the devil.

Is that a correct and accurate quotation of what was said in Memphis?

Mr. MOLLOY. I only see the last part of that quote here, sir; are they together?

Mr. LIPSCOMB. They are taken from different portions of the story.

Mr. MOLLOY. I see. Yes, that is my correct recollection of the quotes.

Mr. LIPSCOMB. Another portion of this report appearing in the February 3 edition of the Commercial Appeal states, and you are quoting here from the speaker:

> Fools that they are, to think they can split us. * * * We'll meet them in every back alley and when we bring them down the main road the umpire [Supreme Court] will say: "You're still out." We have been peaceful recently, waiting for the other side to show its cards. They brought out all their top cards and we know we can handle them. Now we're ready to go. But there is room for only one in the driver's seat and that's the NAACP.

Is that correct quote from the speaker?

Mr. MOLLOY. To my recollection, it is, sir.

Mr. LIPSCOMB. That is also true of the other portions of this particular account of this meeting where you have quoted the speaker and it has not been made a part of the actual interrogation of the witness; those are the only portions of your particular article that were made a part of the interrogation, the whole article was offered as an exhibit?

Mr. MOLLOY. Yes, sir.

Mr. LIPSCOMB. That is all.

Mr MOLLOY That is right.

Mr. LIPSCOMB. I think we heard Judge Marshall's comment with respect to it and the meaning behind it and I won't question it.

Mr. MOLLOY. I don't understand your question, sir.

Mr. LIPSCOMB. I was simply saying for the record that Judge Marshall commented upon it, explained the purpose that he had and the meaning that was to be given the passage that you have described, and I have no questions.

Mr. MOLLOY. Thank you, Senator.

Senator JOHNSTON. I think the record on that subject will speak for itself. Some of it he denied and some of it he admitted, as far as I remember.

Mr. LIPSCOMB. That is all.

Senator JOHNSTON. It speaks for itself. The record.

Mr. MOLLOY. Thank you.

Senator JOHNSTON Thank you very much.

Next witness.

Mr. LIPSCOMB. Mr. Clark Porteous.

Senator JOHNSTON. He was here this morning.

Mr. LIPSCOMB. He just stepped out, I think. He will be here in a minute.

Senator JOHNSTON. Since we finished with the other witnesses a little sooner than he thought we would, he may have gone to Senator Kefauver's. They are trying to find him and he is here.

Senator KEATING. Mr. Chairman, I have a very short piece of documentary evidence I would like to submit for the record. Mr. Chairman, as you will remember, the American Bar Association did not appear here through a witness, although they filed with the committee a letter or an indication in some way that their committee on Federal judiciary found Judge Marshall to be well qualified.

On Monday of this last week, I sent a wire to Bernard G. Segal, the chairman of that committee, asking for some further information with regard to what they had done in their investigation, and I received the following telegram from him, dated August 23, which I would like to enter in the record, and as long as we are waiting for a witness, it is short, if I may.

Senator JOHNSTON. Proceed.

Senator KEATING (reading):

Re your telegram requesting certain information concerning investigation of standing committee on Federal judiciary of American Bar Association on qualifications of Thurgood Marshall for appointment as judge of U.S. Court of Appeals for Second Circuit, we interviewed in person or by telephone, more than 50 judges and lawyers, approximately one-half in the second circuit and one-half in other parts of the country, including Justices of the Supreme Court of the United States, judges of U.S. courts of appeals of five different circuits, judges of U.S. district courts, two former Attorneys General and two former Deputy Attorneys General of the United States, and a fair cross section of practicing members of the bar. These included key advisers on judicial selection to the last four Presidents of the United States. Cloyd LaPorte, of New York, as member of our committee from the second circuit, and I, as chairman of the committee, each separately met with and questioned Judge Marshall at length. Our committee's investigation developed that Mr. Marshall is a lawyer of highest character and integrity, and of undoubted loyalty to the Government of the United States and adherence to the principle of ordered liberty under the rule of law. Justices of the Supreme Court and judges of other Federal courts in various parts of the country before whom Thurgood Marshall appeared, attested to his legal competence, and lawyers associated with or opposed to him in litigation matters, confirmed the excellence of his professional work. I personally read briefs prepared by Mr. Marshall and I considered them to be of high caliber. We found every evidence that he has a keen appreciation of the canons of ethics of the American Bar Association and that he has complied with them in every respect, and we received no evidence to the contrary. Our committee, consisting of 1 member from each of the 11 circuits into which the Federal judicial system is divided had no hesitancy whatever in unanimously concluding that Mr. Marshall was well qualified for this appointment. I shall be glad to supply any further facts you may desire.

BERNARD G. SEGAL.

And I think it would be appropriate also to insert in the record at this point the membership of this committee which he says acted unanimously in this matter, consisting of Robert Meserve, of Boston;

Cloyd LaPorte, of New York; Bernard G. Segal, of Philadelphia, chairman; Stuart B. Campbell, of Wytheville, Va.; Leon Jaworski, Houston, Tex., who I understand is now the president of the Texas Bar Association; Earl F. Morris, Columbus, Ohio; Barnabas F. Sears, Chicago; Ray E. Willy, Sioux Falls, S. Dak.; Eugene D. Bennett, San Francisco; Gerald R. Klein, Tulsa, Okla.; and Preston C. King, Jr., of the District of Columbia.

I would also like to offer for the record, Mr. Chairman, a wire which has just been received, dated August 23, from Herbert Brownell, president of the Association of the Bar of the City of New York, addressed to me, reading as follows:

The executive committee of the Association of the Bar of the City of New York today unanimously adopted the following resolution:

"*Resolved*, That the Association of the Bar of the City of New York urge the Committee on the Judiciary of the U.S. Senate to file promptly a report favorable to Judge Thurgood Marshall's confirmation and that the Senate act promptly to confirm Judge Marshall's appointment to the Court of Appeals for the Second Circuit."

Thank you very much, Mr. Chairman.

Senator HART. This is the former Attorney General of the United States?

Senator KEATING. Yes; that is right.

Senator JOHNSTON. The next witness.

Mr. LIPSCOMB. Mr. Porteous, will you be sworn, please?

Senator JOHNSTON. Raise your right hand. You swear the evidence your give before this subcommittee to be the truth, the whole truth, and nothing but the truth, so help you God?

TESTIMONY OF CLARK PORTEOUS

Mr. PORTEOUS. I do.

Senator JOHNSTON. Have a seat.

Mr. LIPSCOMB. Your name is Clark Porteous?

Mr. PORTEOUS. Yes, sir.

Mr. LIPSCOMB. Where are you employed, Mr. Porteous?

Mr. PORTEOUS. The Memphis Press-Scimitar in Memphis, Tenn.

Mr. LIPSCOMB. How many years have you worked for the Memphis Press-Scimitar?

Mr. PORTEOUS. Twenty-eight and a half years.

Mr. LIPSCOMB. On or about February 3, 1956, do you recall covering for your paper a meeting in Memphis where Thurgood Marshall was the chief speaker?

Mr. PORTEOUS. Yes, sir.

Mr. LIPSCOMB. I will hand you a copy of this particular news story and ask you if you can identify it.

Mr. PORTEOUS. Yes, sir. It is a story and a picture about the story I wrote about.

Mr. LIPSCOMB. Do you recall in covering this particular instance whether the speaker had a prepared manuscript or whether he was speaking from notes or extemporaneously, and you wrote your story on the basis of his spoken word rather than the words that might have been written in advance?

Mr. PORTEOUS. Mr. Lipscomb, I am not sure, but I don't believe he had a manuscript, but he could have. I just really don't remember. It has been a good while ago.

Mr. LIPSCOMB. As a reporter, do you also take shorthand notes?

Mr. PORTEOUS. Yes, sir.

Mr. LIPSCOMB. I will ask you if this story is a correct and factual account of what occurred at that particular meeting?

Mr. PORTEOUS. Yes, sir; I am sure it is.

Mr. LIPSCOMB. And those particular portions of the story where you quote the words of the speaker are true and accurate quotations?

Mr. PORTEOUS. Yes, sir.

Mr. LIPSCOMB. The story itself, which is exhibit 29A, to the testimony, has already been made a part of the record and is substantially the same, Mr. Chairman, particularly insofar as the quotes concerned are those which I went into more detail with Mr. Molloy, since they were covering the same story. I just simply wanted this identified for the record.

Senator JOHNSON. As corroborative.

Mr. LIPSCOMB. That is correct. That is all.

Senator JOHNSTON. Any questions? They might have some questions here, I don't know.

Senator HART. I think, as the chairman indicated, Senator Keating and I feel the record speaks for itself.

Senator KEATING. That is correct, and without in any way challenging the integrity or accuracy of either of the reporters, they both covered the same meeting and quoted Judge Marshall quite differently.

It may well have been different parts of his address. It often happens.

Senator JOHNSTON. I think the record speaks for itself. It is what Marshall answered and what he denied; of course what you have testified here it is not exactly the same, of course, so there it is. The record speaks for itself.

Thank you for coming.

Mr. LIPSCOMB. Mr. Chairman, I previously overlooked offering the text of the *NAACP* v. *Harrison* for the record which I would like inserted at this point, and I have one additional item I would like to offer that was taken from Newsweek of September 18, 1961, a statement that was made by the nominee and only the part of this particular item that contains a statement which is very short in itself, I would like to have entered.

(Material referred to follows:)

Supreme Court of Appeals of Virginia

Staunton

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, ETC. *v.* A. S. HARRISON, JR., ATTORNEY GENERAL OF VIRGINIA, ET. AL.

NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC. *v.* A. S. HARRISON, JR., ATTORNEY GENERAL OF VIRGINIA, ET AL.

September 2, 1960.

Record Nos. 5096, 5097.

Present, All the Justices.

(1) Attorney—Solicitation of Business and Capping—Chapter 33, Acts of Assembly, Ex. Sess. 1956, Upheld.
(2) and (3) Attorneys—Solicitation of Business—Activities of NAACP Held Improper Solicitation.

(4) Attorneys—Solicitation of Business—Not Justified on Grounds of Protecting Constitutional Rights.
(5) Freedom of Speech—Not Denied by Chapter 33, Acts of Assembly, Ex. Sess. 1956.
(6) (8) Maintenance—Chapter 36, Acts of Assembly, Ex. Sess. 1956 Held to Deny Constitutional Rights.

1. By chapter 33 of the Acts of Assembly, Ex. Sess., 1956, the legislature amended former statutes defining and punishing malpractice by attorneys in such fashion as to broaden the definition of solicitation of legal business to include acceptance of employment or compensation from any person or organization not a party to a judical proceeding and having no pecuniary right or liability in it. The chapter also made it an offense for any such person or organization to solicit business for any attorney. Appellants, the National Association for the Advancement of Colored People and the NAACP Legal Defense and Educational Fund, Inc., New York corporations whose major purpose was the elimination of racial discrimination, sought by declaratory judgment proceedings a construction of this chapter and of chapter 36 as they might affect appellants, their affiliates, officers, members, attorneys retained or paid by them and litigants to whom they might give assistance in cases involving racial discrimination. Appellants asserted the enactments were penal and were vague and ambiguous. It was held, however, that chapter 33 was neither vague nor ambiguous, but to the contrary showed a clear legislative intent further to control the evils of improper solicitation of legal business for the benefit of attorneys.
2. The evidence showed that the NAACP had organized negroes into local branches, which were associated in a State Conference; had formed a legal staff to direct actions pertaining to racial matters; urged the institution of legal proceedings to challenge discrimination; and as an inducement to institute suits offered the services of attorneys selected and paid by it, the Fund, and the Conference. Such suits were strictly controlled by the NAACP, and between many litigants and the attorneys there was absent the usual professional contact. Financial ability of litigants to prosecute their own cases was not a consideration since neither the NAACP nor the Fund operated as a legal society. Under this evidence the appellants and their local affiliates were engaged in the unlawful solicitation of legal business in violation of chapter 33.
3. There was no merit in appellants' argument that their activities were not such as are commonly considered by the legal profession as unethical solicitation of business. On the contrary, the acceptance of employment by an attorney in cases solicited by the NAACP would constitute a violation of canons 35 and 47 of the canons of professional ethics as well as a violation of chapter 33.
4. Nor could appellants' argument be countenanced that because the were allegedly aiding others in asserting their constitutional rights chapter 33 should be construed not to limit their activities.
5. Chapter 33 does not violate the rights of freedom of speech and assembly nor deny due process of law or the equal protection of the laws. A statute which forbids lay persons and organizations to solicit employment for attorneys or to engage in the business of furnishing attorneys to reder legal services is a valid police regulation.
6. By chapter 36 of the Acts of Assembly, Ex. Sess. 1956, in section 1(a) it was made an offense for any person to give any money or thing of value or personal services as an inducement to any person to commence or to prosecute further any legal proceeding. No exception was made as to indigent persons. It was held that under this statute indigent persons might be denied free access to the courts and others might be denied their fundamental right to aid indigents. For the denial of due process thus possible the section was declared unconstitutional, since the test of the constitutional validity of a law is not merely what has been done under it, but what may by its authority be done.
7. Chapter 36, section 1(b) made it a criminal offense for any person to advise or counsel the bringing of a suit against the Commonwealth or any of its agencies or officers unless the person so counseling was related to or in a position of trust with the plaintiff, or had a direct interest in the proceeding or had been consulted for professional advice. This statute was held unconstitutional because denying the right of freedom of speech.

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8. Chapter 36 was unconstitutional for the further reason that it denied the equal protection of the laws to appellants, they being subject to its provisions while many other persons were expressly exempted. For the classification so established no reasonable basis could be found.

Appeal from decrees of the Circuit Court of the city of Richmond. Hon. Edmund W. Hening, Jr., judge presiding.

Affirmed in part; reversed in part and remanded.

The opinion states the case.

Robert L. Carter (*Oliver W. Hill*, on brief), for appellant, NAACP.

Spottswood W. Robinson III (*Thurgood Marshall*, on brief), for appellant, NAACP Legal Defense and Education Fund, Inc.

David J. Mays (*John W. Knowles, Assistant Attorney General; Henry T. Wickham*, on brief), for appellees, A. S. Harrison, Jr., Attorney General, et al.

I'ANSON, J., delivered the opinion of the court.

The National Association for the Advancement of Colored People, hereinafter referred to as the NAACP, and the NAACP Legal Defense and Educational Fund, Inc., hereinafter referred to as the Fund, appellants herein, filed their separate bills of complaint in the court below against Albertis S. Harrison, Jr., Attorney General of the Commonwealth of Virginia, the attorneys for the Commonwealth of the cities of Richmond, Newport News and Norfolk, and the counties of Arlington and Prince Edward, Virginia, appellees herein, to secure a declaratory judgment construing chapters 33 and 36, Acts of Assembly, Ex. Sess., 1956, codified as §§ 54–74, 54–78, 54–79, Code of 1950, as amended, 1958 Replacement Volume, and §§ 18–349.31 to 18–349.37,[1] inclusive, Code of 1950, as amended, 1958 Cum. Supp., as they may affect the appellants, their officers, members, affiliates of NAACP, contributors, voluntary workers, attorneys retained or employed by them or to whom they may contribute monies and expenses, and litigants receiving assistance in cases involving racial discrimination, because of the activities of the NAACP and the Fund in the past or the continuation of like activities in the future.

The NAACP, in addition to seeking a construction of the aforementioned statutes, alleged that the statutes are unconstitutional and void because their enforcement would deny to it, its affiliates, officers, members, contributors, voluntary workers, attorneys retained or employed by it, and litigants whom it may aid, due process of law and equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

The two suits were heard and considered together in the court below, by consent of all parties, on the appellants' bills; their exhibits, which included a transcript of the evidence, exhibits, the majority and dissenting opinions of the three-judge federal court, and the judgment entered in the case of *National Association for the Advancement of Colored People* v. *Patty*, 159 F. Supp. 503 (judgment vacated and remanded *sub nom. Harrison, et al.* v. *National Association for the Advancement of Colored People*, 360 U.S. 167, 79 S. Ct. 1025, 3 L. ed. 2d 1152); the answers and exhibits of the appellees; and *ore tenus* testimony on behalf of the appellees and the NAACP, except one deposition taken on behalf of the NAACP. No testimony was taken on behalf of the Fund.

The court below held, so far as need here be stated, (1) that chapters 33 and 36 do not violate the constitutional guarantees of freedom of speech and assembly, due process of law and equal protection of the laws under the Fourteenth Amendment; (2) that the evidence shows that the appellants, their officers, affiliates, members, voluntary workers and attorneys are engaged in the improper solicitation of legal business and employment in violation of chapter 33 and the canons of legal ethics; (3) that attorneys who accept employment by appellants to represent litigants in cases solicited by the appellants, and in which they pay all costs and attorneys' fees, are violating chapter 33 and the canons of legal ethics; and (4) that the appellants and those associated with them advise persons of their legal rights in matters in which the appellants have no direct interest, and whose professional advice has not been sought in accordance with the Virginia canons of legal ethics, and as an inducement for such persons to assert their legal rights through the commencement of or further prosecution of legal proceedings against the Commonwealth of Virginia, any department,

[1] Now secs. 18.1–394 to 18.1–400, 1960 Cum. Supp.

agency or political subdivision thereof, or any person acting as an employee for either or both or any of the foregoing, the appellants furnish attorneys employed by them and pay all court costs incident thereto, and that these activities violate either chapter 33 or 36, or both.

The court's decree enumerated certain detailed activities of the appellants which do not violate chapters 33 and 36, and since they are not challenged by any of the parties hereto, they need not be stated herein.

From the decree of the chancellor we granted an appeal and supersedeas in each cause. They will be considered together by us, as they were in the court below, except the statutes involved will be considered separately.

The questions presented on these appeals are:

(1) Do the activities of the appellants, or either of them, amount to solicitation of business, prohibited by chapter 33?

(2) Do the activities of the appellants, or either of them, amount to an inducement to others to commence or further prosecute lawsuits against the Commonwealth, its officers, agencies, or political subdivisions, as prohibited by chapter 36?

(3) Do the provisions of either chapters 33 or 36 violate the Virginia Bill of Rights (Constitution § 12) and the 14th amendment to the Constitution of the United States?

The evidence shows that the NAACP and the Fund are nonprofit membership corporations organized under the laws of the State of New York with authority to operate in this Commonwealth as foreign corporations. The NAACP and the Fund functioned as one corporation with the same officers, directors and members from 1911 until 1948, when, for tax purposes and other reasons, the Fund was organized as a separate corporation.

The principal purpose of the NAACP is to eliminate all forms of racial segregation. It has been described by its counsel as a political organization for those who oppose racial discrimination.

Affiliated with the NAACP are approximately one thousand unincorporated branches operating in 45 states and the District of Columbia. The branches are chartered by the NAACP, and, for failure of the branch officers to follow strictly the policies and directives of the national body, their charters may be revoked or their officers removed. The branches are generally grouped together in each state into an unincorporated association. In Virginia the association is known as the Virginia State Conference of NAACP Branches.

The State Conference holds annual conventions which are attended by delegates from the local branches. It takes the lead in NAACP's activities in this State under the administration of a full-time salaried executive secretary who is responsible to a board of directors. The executive secretary coordinates the activities of the branches in accordance with the policies and objectives of the Conference and the NAACP, supervises local membership and fund raising campaigns, distributes educational material dealing with racial matters, and performs many other duties.

The executive secretary, members of the legal staff, and other representatives of the State Conference make speeches before local branches and other groups for the purpose of advising those present that all segregation laws are unconstitutional and void, and urging them to challenge laws to eliminate segregation through the institution of legal proceedings which the State Conference, the NAACP and the Fund sponsor at no cost to the litigants.

The aid given litigants to initiate suits is in the form of furnishing lawyers who are members of the legal committee of the Conference, the NAACP, and regional counsel of the Fund, the payment of court costs and other expenses of litigation.

The Conference receives financial support to defray the cost of litigation it sponsors and other expenses from the local branches, the national bodies, and contributions.

Letters and directives addressed to officers of local branches and signed by the executive secretary of the Conference, filed as exhibits by the appellees, show the plans, methods and procedures used by the NAACP to sponsor litigation in school cases.

A letter dated May 26, 1954, reads in part as follows:

"It is of utmost importance that your branch retain the leadership in all actions engaged in in your community."

In a letter dated June 16, 1954, it is said:

"The Conference is proceeding with the development of its plan and will advise you thereof as soon as this work is completed."

A confidential directive of June 30, 1955, from the president and executive secretary to local branches relative to the handling of petitions for presentation to local school boards stated in part as follows:

"Petitions will be placed only in the hands of highly trusted and responsible persons to secure signatures of parents or guardians only.

"The signing of the petition by a parent or guardian may well be only the first step to an extended court fight. Therefore, discretion and care should be exercised to secure petitioners who will—if need be—go all the way. * * *

"The Education Committee chairman will forward completed petitions to the Executive Secretary of the State Conference. * * *

"Following the above procedure, it becomes apparent that the faster your branches act the sooner will your school board be petitioned to desegregate your schools. Every act of our branch and the State Conference officials from this point on should be considered as an emergency action, and must take precedence over routine affairs—personal or otherwise."

Another directive contained in part these instructions:

"Organize the parents in the community so that as many as possible will be familiar with the procedure when and if law suits are begun in behalf of plaintiffs and parents.

"If no plans are announced or steps taken towards desegregation by the time school begins this fall, 1955, the time for law suits has arrived. At this stage court action is essential because only in this way does the mandate of the Supreme Court that a prompt and reasonable start towards full compliance become fully operative on the school boards in question.

"At this stage the matter will be turned over to the Legal Department and it will proceed with the matter in court."

An official report of NAACP and its Virginia Conference activities from May 17, 1954, to September 13, 1957, shows the purpose and a continuation of their method of operation as follows:

"Up-to-date picture of action by NAACP branches since May 31.

"A. Petitions filed and replies.

"A total of 55 branches have circulated petitions.

"B. Where suits are contemplated.

"Petitions have been filed in seven counties/cities. Graduated negative response received in all cases.

"C. Readiness of lawyers for legal action in certain areas.

"Selection of suit sites reserved for legal staff.

"State legal staff ready for action in selected areas.

"D. Do branches want legal action.

"The majority of our branches are willing to support legal action or any other program leading to early desegregation of schools that may be suggested by the National and State Conference officers. Our branches are alert to overtures by public officials that Negroes accept voluntary racial segregation in public education."

An explanation of the above report was made by the executive secretary of the Conference as follows: The language, "Where suits are contemplated," referred to places where petitions had been denied by local school boards; "Readiness of lawyers for legal action in certain areas," meant financial aid was available; and "Selection of suits reserved for legal staff," meant that members of the legal staff would pick the places were suits would be brought.

The State Conference maintains a legal staff of fifteen members, one of whom serves as chairman without compensation for that particular service. The members of the staff are elected at the annual convention of the Conference after being nominated by a committee, which in turn receives its recommendations for candidates from the chairman of the legal staff, and there have never been additional nominations from the floor of the convention.

The members of the legal staff of the Conference are reimbursed for expenses incurred in speaking before local branches and other groups and are paid fees at the rate of $60 per day for their services in cases in which NAACP has interested itself, "as long as such attorneys adhere strictly to NAACP policies;" namely, that a school case must be tried as a direct attack on segregation. Every item of expense and all legal fees paid by the Conference are approved by the chairman of the legal staff, except the expenses and fees of its chairman, which are approved by the president of the Conference. One member of the legal staff testified that he entered two of the school segregation cases at the suggestion of the chairman, and that the relationship "has been so pleasant and so profitable." Only members of the legal staff are selected by

NAACP to bring suits in which it has an interest, and the places for bringing such suits are selected by the chairman, who refers the case to a member of the legal staff residing in the area from which the complaining party came. Without exception, when a member of the legal staff brings a lawsuit in his community other members of the staff are associated with him.

The chairman of the legal staff of the Conference is a member of the legal committee of the NAACP, Virginia counsel for the NAACP, and its registered Virginia agent.

The NAACP is not a legal aid society. Its policy during the past several years has been not to participate in cases simply because Negroes need assistance on account of poverty. Assistance is given only in cases involving constitutional rights, and then only so long as litigants adhere to the principles and policies of the NAACP and the Conference.

The initial contact in the Charlottesville school segregation case was made by the president of the local branch of the NAACP when he requested the chairman of the legal staff to speak at a meeting of parents of certain school children. At this meeting some of the parents signed authorization forms for the chairman to represent such parents and their children in legal proceedings to desegregate the schools of that city. Other authorization forms were distributed and signed with no attorney's name appearing thereon, but the name of the chairman of the legal staff was inserted later.

In the Arlington school case, the petition presented to the local school board for desegregation of the schools was prepared by the State Conference, and most of the signatures were obtained by the vice president of the Arlington branch, who was also one of the plaintiffs in a suit later instituted. She was told by the chairman of the legal committee of the Conference and the regional counsel of the Fund that they would institute legal proceedings if the school board denied the request to desegregate the schools.

All authorization forms used in the school segregation cases were prepared by the chairman of the legal staff and most of them authorized the attorney named therein to associate such other attorneys as he desired. Usually, the general counsel of the NAACP and the regional counsel of the Fund are associated in the trial of cases sponsored by the Conference, even though such association is not directly authorized by the litigants.

Ordinarily a complaint is filed with the executive secretary, who refers it to the chairman of the legal staff, and the chairman, with the concurrence of the president of the Conference, decides whether suit will be instituted. The executive secretary, however, testified that he did not refer any of the plaintiffs in the school segregation cases to the chairman of the legal staff.

Many of the litigants in school cases had no personal contact with any of the lawyers handling cases in which their names appeared as parties plaintiff, and learned of the institution of suits from newspaper accounts. Some of the litigants stated that they did not know the names of the lawyers representing them, but they did know they were NAACP lawyers.

Only one witness, out of some 24 litigants in school cases, testified that he would have instituted legal proceedings if the NAACP had not agreed to finance them.

The Fund has a small membership and no affiliates. Its financial support comes from contributions solicited by letters and telegrams from New York City. The purpose of the Fund, as stated in its certificate of incorporation, is as follows:

"(*a*) To render legal aid gratuitously to such Negroes as may appear to be worthy thereof, who are suffering legal injustice by reason of race or color and unable to employ and engage legal aid and assistance on account of poverty.

"(*b*) To seek and promote the educational facilities for Negroes who are denied the same by reason of race or color.

"(*c*) To conduct research, collect, collate, acquire, compile and publish facts, information and statistics concerning educational facilities and educational opportunities for Negroes and the inequality in the educational facilities and educational opportunities provided for Negroes out of public funds; and the status of the Negro in American life."

The director-counsel of the Fund is charged with the duty of carrying out the purposes set out in the charter and the policies fixed by its board of directors. He has under his direction a legal research staff of six full-time lawyers who reside in New York City but who may be assigned to places out of New York. In addition to the full-time legal staff, the Fund has five regional counsel

including one residing in Richmond, Va., at an annual retainer of $6,000. The Fund also has at its disposal social scientists, teachers of government, anthropologists and sociologists who are used principally in cases involving school litigation.

The regional counsel of the Fund residing in Richmond, Va., is also a member of the legal staff of the Conference and the legal committee of the NAACP.

The Fund has been approved by the State of New York to operate as a legal aid society because of the provisions of the barratry statute of New York, but counsel stated it does not operate as such. A representative of the Fund testified in the case of the *National Association for the Advancement of Colored People* v. *Patty, supra*, that it furnishes legal assistance when a Conference lawyer requests it or when it is revealed from an investigation, made by the New York office through its regional counsel or one of the lawyers on the State Conference staff, that discrimination exists because of race or color. All costs and expenses incurred in such suits brought on behalf of Negroes are borne by the Fund. The assistance given may be in the form of providing lawyers to assist Conference staff lawyers in the trial of a case, or in the preparation of briefs.

Most of the litigants in the school segregation cases brought in this State were financially able, according to the standards set by the Fund, to finance their own proceedings.

[1] The appellants contend that chapters 33 and 36 are: (1) penal statutes and should be strictly construed; (2) that the statutes are vague and ambiguous; (3) that the language of the statutes cannot be construed to apply to their activities; and in addition the NAACP says (4) if the statutes are construed to apply to their activities they are unconstitutional and void because they deny to it, its officers, employees, members, contributors, affiliates and attorneys the rights of freedom of speech and assembly, equal protection of the laws and due process of law under the 14th amendment to the Constitution of the United States.

Chapter 33 amends and reenacts §§ 54–74, 54–78 and 54–79, Code of 1950. The pertinent parts of the chapter, with the amended parts in italics, are set out in the margin below.[2] These sections deal with *solicitation* of any legal or profes-

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[2] Be it enacted by the General Assembly of Virginia:

1. That §§ 54–74, 54–78 and 54–79 of the Code of Virginia be amended and reenacted as follows:

§ 54–74.

* * * * * * *

(6) "Any malpractice, or any unlawful or dishonest or unworthy or corrupt or unprofessional conduct", as used in this section, shall be construed to include the improper solicitation of any legal or professional business or employment, either directly or indirectly, *or the acceptance of employment, retainer, compensation or costs from any person, partnership, corporation, organization or association with knowledge that such person, partnership, corporation, organization, or association has violated any provision of Article 7 of this chapter*, or the failure, without sufficient cause, within a reasonable time after demand, of any attorney at law, to pay over and deliver to the person entitled thereto, any money, security or other property, which has come into his hands as such attorney; *provided, however, that nothing contained in this Article shall be construed to in any way prohibit any attorney from accepting employment to defend any person, partnership, corporation, organization or association accused of violating the provisions of Article 7 of this chapter.*

* * * * * * *

§ 54–78. As used in this article:

(1) A "runner" or "capper" is any person, corporation, partnership or association acting in any manner or in any capacity as an agent for an attorney at law within this State *or for any person, partnership, corporation, organization or association which employs, retains or compensates any attorney at law in connection with any judicial proceeding in which such person, partnership, corporation, organization or association is not a party and in which it has no pecuniary right or liability,* in the solicitation or procurement of business for such attorney at law* *or for such person, partnership, corporation, organization or association in connection with any judicial proceedings for which such attorney or such person, partnership, corporation, organization or association is employed, retained or compensated.*

The fact that any person, partnership, corporation, organization or association is a party to any judicial proceeding shall not authorize any runner or capper to solicit or procure business for such person, partnership, corporation, organization or association, or any attorney at law employed, retained or compensated by such person, partnership, corporation, organization or association.

(2) An "agent" is one who represents another in dealing with a third person or persons.

§ 54–79. It shall be unlawful for any person, corporation, partnership or association to act as a runner or capper* *as defined in* § 54–78 to solicit any business for* *an attorney at law or such person, partnership, corporation, organization or association,* in and about the State prisons, county jails, city prisons, or other places of detention of persons, city receiving hospitals, city and county receiving hospitals, county hospitals, police courts,* *county* courts, municipal courts,* courts *of record,* or in any public institution or in any public place or upon any public street or highway or in and about private hospitals, sanitariums or in and about any private institution or upon private property of any character whatsoever.

sional business or employment, either directly or indirectly, and provide for the disbarment of attorneys guilty of "malpractice, or [of] any unlawful or dishonest or unworthy or corrupt or unprofessional conduct."

The 1956 amendment to § 54–74, subsection (6), broadens the definition of "malpractice" to include the acceptance of employment from any person, partnership, corporation, organization or association with knowledge that such person, etc., has violated any provision of article 7, chapter 4, title 54, Code of 1950, (§§ 54–78 to 54–83, inclusive).

The amendment to § 54–78 broadens the definition of "runner" or "capper" to include any person, association or corporation acting as an agent for another person, association or corporation who or which employs an attorney in connection with any judicial proceeding in which such person, association or corporation is not a party and has no pecuniary right or liability therein.

The amendment to § 54–79 broadens the offense specified which theretofore made it unlawful for any person, corporation, partnership or association to act as a runner or capper for an attorney at law or to solicit any business for him, to make it unlawful for a person, association or corporation to solicit any business for an attorney at law or any other person, corporation or association.

Violations of § 54–79 are made misdemeanors, and the license of any attorney violating any of the provisions of chapter 33 is subject to revocation or suspension.

While it is true that penal statutes are to be strictly construed, yet in construing such statutes the intention of the legislature must govern, and such intent may be found by giving to the words used their ordinary and usual meaning. *Tiller* v. *Commonwealth*, 193 Va. 418, 420, 69 S.E. 2d 441, 443; *Northrop & Wickham* v. *Richmond*, 105 Va. 335, 339, 53 S.E. 962, 963; *Gates & Son Co.* v. *Richmond*, 103 Va. 702, 706, 707, 49 S.E. 965, 966.

We find no vagueness or ambiguity in the language of chapter 33. The words used are clear and definite in their meaning.

It is clear from the language of the act that the intent and purpose of the legislature in amending and re-enacting chapter 33 was to strengthen the existing statutes to further control the evils of solicitation of legal business for the benefit of attorneys by a person who is not a party to a proceeding and in which he has no pecuniary right or liability. Solicitation of legal business has been considered and declared from the very beginning of the legal profession to be unethical and unprofessional conduct.

[2] There is no merit in the contention of the appellants that the statutes cannot be construed to apply to their activities. When we apply the plain language and meaning of the statutes to the evidence, it is perfectly manifest that the NAACP, its Virginia Conference, its branches and the Fund are engaged in the unlawful solicitation of legal business for their attorneys, in which resulting litigation they are not parties and have no pecuniary right or liability, in violation of chapter 33.

The declared purpose of the NAACP and the Fund is to eradicate every form of racial discrimination. To accomplish this objective the NAACP has organized Negroes throughout the Commonwealth into branches, and formed a legal staff for the purpose of directing and controlling all actions pertaining to racial matters. Members of the NAACP, representatives of the Conference and its legal staff appear before the membership of local branches and other groups in communities in which the organizations wish suits to be brought and by persuasive methods urge those present to assert their constitutional rights to eliminate racial discriminaion by becoming parties plaintiff to legal proceedings, when many of the prospective litigants have had no previous thought of doing so. The services of attorneys selected by the NAACP, its Conference and the Fund are offered at no cost to the prospective litigants as an inducement to institute suits. The litigants and attorneys, however, must adhere to a policy of permitting the NAACP, the Conference and the Fund to direct and control the litigation.

The absence of the usual contact between many of the litigants and the attorneys instituting proceedings is indicative of the control of the litigation by the NAACP and the Conference.

Since the appellants do not operate as legal aid societies, the financial ability of litigants to prosecute their own cases is not considered by the NAACP, the Conference and the Fund in soliciting litigants. A person does not have to be indigent for the NAACP, the Conference and the Fund to pay all costs of litigation.

The communications and activities of the NAACP, the Conference and branches, indicate their plans, methods and procedures in obtaining litigants, and may be summarized as follows:

"* * * Mr. Thurgood Marshall, chief legal counsel of the NAACP, has said that the hardest job his staff has had in bringing equal-education suits has been to persuade Negro teachers and representative Negro parents to stand as plaintiffs. * * *." ("The National Association for the Advancement of Colored People; a Case Study in Pressure Groups," St. James, Exposition Press, Inc., at p. 107.)

In short, the activities of the NAACP, its Conference and the Fund clearly show that they are engaged in fomenting and soliciting legal business in which they are not parties and have no pecuniary right or liability, and which they channel to the enrichment of certain lawyers employed by them, at no cost to the litigants and over which the litigants have no control.

There was evidence on behalf of the Fund in the record of the case of the *National Association for the Advancement of Colored People* v. *Patty, supra,* heard by the three-judge Federal court, and filed as a part of the record in these causes, that it participates in cases only when a prospetcive litigant appears and requests assistance. However, that does not appear to be the case under the additional evidence taken in these causes, much of which was heard *ore tenus* by the court below. Legal business is solicited by the NAACP, representatives of the Conference and its legal staff, of which the regional counsel for the Fund is a member, and he and the Fund are fully acquainted with methods and procedures used to obtain litigants to whom the Fund gives assistance. The evidence shows that the regional counsel of the Fund is usually associated with Conference lawyers in school segregation cases, although he is not generally named in the authorization or power of attorney to institute suit.

[3] There is no merit in the appellants' argument that their activities are not what are commonly considered by the legal profession as solicitation of business contrary to the canons of legal ethics. They rely on several cases which are readily distinguishable under the facts from these causes now before us. Typical of the cases cited is *Gunnels* v. *Atlanta Bar Association,* 191 Ga. 366, 12 S.E. 2d 602, 132 A.L.R. 1165.

In the *Gunnels* case the court upheld the right of the Atlanta Bar Association to furnish counsel to persons who had been victims of sharp loan practices. The attorneys did not receive compensation for their services and the Bar Association did not stand between counsel and client or exercise control over the litigation. The usual and proper relationship of attorney and client existed in that case, which does not exist under the evidence in the causes now before us.

In referring to the relationship that should exist between attorney and client, in the case of *Richmond Ass'n of Credit Men* v. *Bar Association,* 167 Va. 327, 189 S.E. 153, this Court quoted with approval the following (167 Va. at p. 335, 189 S.E. at p. 157):

" 'The relation of attorney and client is that of master and servant in a limited and dignified sense, and it involves the highest trust and confidence. It cannot be delegated without consent, and it cannot exist between an attorney employed by a corporation to practice law for it, and a client of the corporation, for he would be subject to the directions of the corporation and not to the directions of the client. *Re Co-Operative Law Co.*, 198 N.Y. 479, 92 N.E. 15, 16, 32 L.R.A. (N.S.) 55, 139 Am. St. Rep. 839, 19 Ann. Cas. 879."

The acceptance of employment by any attorney in cases in which the NAACP, its Conference and branches act as intermediaries in the solicitation of legal business not only violates chapter 33, but also canons 35 and 47 of the canons of professional ethics adopted by this Court on October 21, 1938, 171 Va. p. xxxii.

Canon 35 reads in part as follows:

"*Intermediaries.*—The professional services of a lawyer should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between client and lawyer. A lawyer's responsibilities and qualifications are individual. He should avoid all relations which direct the performance of his duties by or in the interest of such intermediary. A lawyer's relation to his client should be personal, and the responsibility should be direct to the client. Charitable societies rendering aid to the indigent are not deemed such intermediaries." 171 Va. p. xxxii.

Canon 47 reads as follows:

"*Aiding the Unauthorized Practice of Law.*—No lawyer shall permit his professional services, or his name, to be used in aid of, or to make possible, the unauthorized practice of law by any lay agency, personal or corporate." 171 Va. p. xxxv.

In the Ninth Annual Report of the Virginia State Bar, p. 39, is found an opinion, rendered by the Committee on Unauthorized Practice, which is pertinent in these causes. A union retained an attorney on a salary basis to represent all of its individual members in their claims for compensation before the State Industrial Commission. He received no fees from the individuals for such representation. His sole compensation came from the salary paid him by the union. The committee held that the union was engaged in the practice of law without a license; that it was intervening between the attorney and his clients; and that the attorney was violating the canons of legal ethics.

Courts from other jurisdictions have held that corporations or associations carrying on activities somewhat similar to those of the appellants were engaged in the illegal practice of law and their attorneys were violating the canons of legal ethics.

In re Maclub of America, Inc., 295 Mass. 45, 3 N.E. 2d 272, 105 A.L.R. 1360, an automobile association had been formed for the purpose of furnishing its members with lists of attorneys who would perform services for such members free of charge. The attorneys looked to the association for payment, but the association took no part in the direction or control of the case. The court held that the association was engaged in the illegal practice of law; that the relationship of attorney and client did not exist between the association's members and the attorney; that the particular attorney was compensated by the association and subject to its instructions; that the association possessed the right to hire and fire; and that the practice was considered a contract to furnish legal assistance rather than a contract to pay for legal assistance.

In *People ex rel. Courtney* v. *Association of Real Estate Taxpayers*, 354 Ill. 102, 187 N.E. 823, 826, a corporation was organized to permit united protection of certain taxpayers in matters of taxation and legislation. The owners of real estate were invited to become members by the payment of a fee. Attorneys were selected and paid by the corporation to represent it in taxation litigation and the corporation would determine what questions would be litigated. The court held that, even though suits were brought in the names of individual members, and fees would have cost an individual approximately $200,000, the corporation was engaged in the illegal practice of law.

For other cases, see *People ex rel. Chicago Bar Association* v. *Chicago Motor Club*, 362 Ill. 50, 199 N.E. 1; (a nonprofit corporation) *Doughty* v. *Grills*, 37 Tenn. App. 63, 260 S.W. 2d 379; *Hildebrand* v. *State Bar of California*, 36 Cal. 2d 504, 225 P. 2d 568; *Atchison, Topeka & Santa Fe Railway Co.* v. *Jackson* (10 Cir. 235 F. 2d 390, 393; *In re Brotherhood of Railroad Trainmen*, 13 Ill. 2d 391, 150 N.E. 2d 163, 167.

[4] The appellants also argue that because they are aiding others in asserting their constitutional rights chapter 33 should not be construed to limit their activities. This argument is without merit. Statutes enacted by the General Assembly in the public interest to regulate the practice of law cannot be violated, and canons of legal ethics should not be ignored simply because constitutional rights are asserted. The law provides a procedure for one to follow in asserting his constitutional rights, as well as all other legal rights, and the objective may be achieved without violating statutes and the standards of the legal profession.

[5] The NAACP next contends that chapter 33 is unconstitutional and void because it violates the rights of freedom of speech and assembly, and denies to it, its affiliates, officers, employees, voluntary workers, attorneys and contributors due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States. There is no merit in this contention.

In support of the argument that chapter 33 violates their rights of freedom of speech and assembly, protected under the First Amendment and guaranteed by the Fourteenth Amendment to the Constitution of the United States, they rely on such cases as *Watkins* v. *United States*, 354 U.S. 178, 77 S. Ct. 1173, 1 L. ed. 2d 1273; *Sweezy* v. *State of New Hampshire*, 354 U.S. 234, 77 S. Ct. 1203, 1 L. ed. 2d 1311; and *Thomas* v. *Collins*, 323 U.S. 516, 65 S. Ct. 315, 89 L. ed. 430.

In the *Watkins* case, *supra*, a congressional committee inquired of a witness as to his past associations and he refused to identify his associates during that period on the ground that he did not believe they were now identified with the Communist Party and the questions asked were "outside the proper scope of the committee's activities." On appeal from his conviction for contempt, the Supreme Court held that the pertinency of the question had not been shown; that Congress had not authorized the committee to make an investigation of this

nature; and that a conviction for contempt for refusal to answer could not be sustained.

In *Sweezy* v. *State of New Hampshire*, *supra*, the witness, a teacher in the State university, refused to tell a committee of the state legislature the substance of a lecture he had given at the university, or anything about his opinions and beliefs, on the grounds that the questions were not pertinent to the inquiry and infringed on his freedom of speech, protected under the first amendment. The court held that the witness was not in contempt, since the resolution of the legislature authorizing the inquiry was not broad enough to permit the question.

Obviously, the holdings in the *Watkins* and *Sweezy* cases have no application here, since the court's decisions rested on the relevancy and pertinency of the questions asked by the committees.

It is true that under the holding in the case of *Thomas* v. *Collins*, *supra*, representatives of the NAACP and the Conference have a right to peaceably assemble with the members of the branches and other groups to discuss with and advise them relative to their legal rights in matters concerning racial segregation. But under the evidence of the causes before us the appellants and their associates go beyond that. They solicit prospective litigants to authorize the filing of suits by NAACP and Fund lawyers, who are paid by the Conference and controlled by NAACP policies, in violation of chapter 33.

Chapter 33 does not deny the appellants, or those associated with them, freedom to speak and assemble. The purpose and intent of the chapter is to regulate the practice of law and to bring such practice in harmony with the ethical standards of the profession. It prohibits, under certain circumstances, the solicitation of legal business. The prohibition of solicitation of legal business is merely a regulation in the interest of the public and the legal profession.

A State, under its police power, has the right to require high standards of qualifications and ethical conduct from those who desire to practice law within its borders (*Bradwell* v. *Illinois*, 83 U.S. (16 Wall.) 130, 139, 21 L. ed. 442; *Schware* v. *Board of Bar Examiners of the State of New Mexico*, 353 U.S. 232, 77 S. Ct. 752, 756, 1 L. ed. 796, 64 A.L.R. 2d 288), and it may revoke or suspend the license to practice law of attorneys who are guilty of unethical conduct. *Richmond Association of Credit Men* v. *Bar Association*, 167 Va. 327, 334–336, 189 S.E. 153, 157; *Campbell* v. *Third District Committee*, 179 Va. 244, 249, 250, 18 S.E. 2d 883, 885.

A statute which forbids laymen to solicit employment for attorneys, or engage in the business of furnishing attorneys to render legal services, is a valid police regulation not violative of any constitutional restriction. *McCloskey* v. *Tobin*, 252 U.S. 107, 40 S. Ct. 306, 64 L. ed. 481; *Hightower* v. *Detroit Edison Co.*, 262 Mich. 1, 247 N.W. 97, 86 A.L.R. 509; *Kelley* v. *Boyne*, 239 Mich. 204, 214 N.W. 316, 53 A.L.R. 273; *Chicago, B. & Q. R. Co.* v. *Davis*, 111 Neb. 737, 197 N.W. 599, 601; 14 C. J. S., Champerty and Maintenance, § 35, p. 381; Anno. 53 A.L.R., p. 279–280.

[6] We shall now direct our attention to chapter 36 (§§ 18–349.31 to 18–349.37, inclusive, Code of 1950, as amended, 1958 Cum. Supp.) Acts of Assembly, Ex. Sess. 1956, p. 37, the pertinent parts of which are printed in the margin.[3]

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[3] Be it enacted by the General Assembly of Virginia:

1. § 1.(a) It shall be unlawful for any person not having a direct interest in the proceedings, either before or after proceedings commenced:

to promise, give or offer, or to conspire or agree to promise, give or offer, or
to receive or accept, or to agree or conspire to receive or accept, or
to solicit, request or donate,

Any money, bank note, bank check, chose in action, personal services or any other personal or real property, or any other thing of value, or any other assistance as an inducement to any person to commence or to prosecute further any original proceeding in any court of this State, or before any board or administrative agency within the said State, or in any United States court located within the said State against the Commonwealth of Virginia, any department, agency or political subdivision thereof, or any person acting as an officer or employee for either or both or any of the foregoing; provided, however, this section shall not be construed to prohibit the constitutional right of regular employment of any attorney at law, for either a fixed fee or upon a contingent basis, to represent such person, firm, partnership, corporation, group, organization or association before any court or board or administrative agency.

(b) It shall be unlawful for any person, not related by blood or marriage or who does not occupy a position of trust or a position in loco parentis to one who becomes the plaintiff in a suit or action, who has no direct interest in the subject matter of the proceeding and whose professional advice has not been sought in accordance with the Virginia canons of legal ethics, to advise, counsel or otherwise instigate the bringing of a suit or action against the Commonwealth of Virginia, any department, agency or political subdivision thereof, or any person acting as an officer or employee for either or both or any of the foregoing.

(c) As used in this act, "person" includes person, firm, partnership, corporation, organ-

This chapter, like chapter 33, deals with the regulation and supervision of the practice of law and is a valid legislative enactment under the State's police power unless it invades rights protected and guaranteed by the State and Federal Constitutions.

The NAACP contends that the chapter is unconstitutional and void because it violates the rights of freedom of speech and assembly and denies to it, its officers, employees, voluntary workers, attorneys and contributors due process of law and the equal protection of the laws under the Fourteenth Amendment to the Constitution of the United States.

On the other hand, the appellees say that the chapter does not violate any constitutional guarantees, and that under the evidence the appellants have violated the statute, which is merely a common law definition of maintenance[4] with the recognized exceptions.

Section 1(a) of the act makes it unlawful, with certain exceptions, for any person not having a "direct interest" in a legal proceeding to promise, give, offer, donate money, personal services, or any other thing of value, or "any other assistance as an inducement to any person *to commence or to prosecute further* any original proceeding in any court of this State, or before any board or administrative agency within the said State, or in any United States court located within the said State against the Commonwealth of Virginia," its agencies or political subdivisions, or any officer or employee thereof. [Emphasis added.]

Section 1(b) makes it "unlawful for any person, not related by blood or marriage or who does not occupy a position of trust or a position in loco parentis to one who becomes the plaintiff in a suit or action, who has no direct interest in the subject matter of the proceeding and whose professional advice had not been sought in accordance with the Virginia canons of legal ethics, to *advise, counsel or otherwise instigate* the bringing of a suit or action against the Commonwealth of Virginia, any department, agency or political subdivision thereof, or any person acting as an officer or employee for either or both or any of the foregoing." [Emphasis added.]

We have frequently said that the test of the constitutional validity of a law is not merely what has been done under it, *but what may by its authority be done. Edwards* v. *Commonwealth*, 191 Va. 272, 285, 60 S.E. 2d 916, 922; *Richmond* v. *Carneal*, 129 Va. 388, 393, 106 S.E. 403, 405, 14 A.L.R. 1341; *Violet* v. *City of Alexandria*, 92 Va. 561, 574, 23 S.E. 909, 913, 31 L.R.A. 382.

Under § 1(a) a friend or neighbor of a poor man is prohibited from aiding him in asserting his claim against the Commonwealth, its agencies or political subdivisions, if his claim does not fall within the exceptions enumerated in § 6 of chapter 36, no matter how meritorious it may be.

The law has always recognized the right of one to assist the poor in commencing or further prosecuting legal proceedings. To deny this right would be oppressive and enable the other party, if his means so permits, an advantage over one with little means. Aiding the indigent is one of the generally recognized exceptions to the law of maintenance. *Gilman* v. *Jones*, 87 Ala. 691, 5 So. 785,

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ization or association; "direct interest" means a personal right or a pecuniary right or liability.

(d) Any person violating any of the provisions of § 1 of this act shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars or confined in jail for not more than one year, or both.

* * * * * * *

§ 6. This act shall not be applicable to attorneys who are parties to contingent fee contracts with their clients where the attorney does not protect the client from payment of the costs and expense of litigation, nor shall this act apply to a mandamus proceeding against the State Comptroller, nor shall this act apply to any matter involving zoning, annexation, bond issues, or the holding or results of any election or referendum, nor shall this act apply to suits pertaining to or affecting possession of or title to real or personal property, regardless of ownership, nor shall this act apply to suits involving the legality of assessment or collection of taxes or the rates thereof, nor shall this act apply to suits involving rates or charges or services by common carriers or public utilities, nor shall this act apply to criminal prosecutions, nor to the payment of attorneys by legal aid societies approved by the Virginia State Bar, nor to proceedings to abate nuisances. Nothing herein shall be construed to be in derogation of the constitutional right of real parties in interest to employ counsel or to prosecute any available legal remedy under the laws of this State. The provisions hereof shall not affect the right of a lawyer in good faith to advance expenses as a matter of convenience but subject to reimbursement.

[4] Maintenance is "an officious intermeddling in a suit that in no way belongs to one by maintaining or assisting either party with money or otherwise to prosecute or defend it." 4 Blackstone's Commentaries, p. 135. See also 10 Am. Jur., Champerty and Maintenance, § 1, p. 549.

786–787; *Rice* v. *Farrell*, 129 Conn. 362, 28 A. 2d 7, 9; 14 C.J.S., Champerty and Maintenance, § 24, p. 368; 4 Blackstone's Commentaries, ch. 10, pp. 135 et seq.

This section denies to an indigent person free access to the courts, both State and Federal, except those within the enumerated class under § 6 of chapter 36, which is a fundamental right of all men, and denies to him due process of law.

A person who desires to aid an indigent suitor, unless his case falls within the excepted class, is deprived, under the terms of the act, of his fundamental right to use his property in a lawful manner and is made criminally liable if he does give such aid.

[7] Where the principle of free discussion is concerned, it is the statute and not the accusation or the evidence under it which prescribes the limits of permissible conduct. *Thornhill* v. *Alabama*, 310 U.S. 88, 60 S. Ct. 736, 84 L. ed. 1093.

Under § 1(b) of the act, no person or association, including the appellants, except those within the excepted classification, may advise or counsel any person or group with respect to instituting or prosecuting actions against the State, its agencies or political subdivisions, or their officers or employees, to assert what these persons or groups may believe are their legal or constitutional rights. Nor may the appellants render financial aid to these people in such litigation, even though the litigants may select and employ counsel of their own choosing, in accordance with the recognized canons of legal ethics.

This section denies the right of freedom of speech, guaranteed by the Virginia Bill of Rights (Constitution § 12), secured by the First Amendment to the Constitution of the United States and guaranteed by the Fourteenth Amendment, which give one the right to hold views on all controversial questions, to express such views, and to disseminate them to persons who may be interested, and neither the Federal nor State government can take any action which might prevent such free and general discussion of public matters as may seem to be essential to prepare people for an intelligent exercise of what they may consider to be their rights as citizens. See 16 C.J.S., Constitutional Law, § 213(1), pp. 1093, 1094, and the many cases there cited.

A State may forbid one to practice law without a license, but it cannot prevent an unlicensed person from making a speech before an assembly, telling them of their rights and urging them to assert same. See *Thomas* v. *Collins*, *supra*, (concurring opinion, 323 U.S. 516, p. 544, 65 S. Ct. 315, 89 L. ed. 430).

State statutes must be specifically directed to acts or conduct which overstep legal limits, and not include those which keep within the protected area of free speech. *Edwards* v. *Commonwealth*, *supra* (191 Va. at p. 285, 60 S.E. 2d at p. 922).

While the appellants, and those associated with them, cannot solicit and channel legal business to attorneys whom they pay, and who are subject to their directions, in violation of chapter 33, a statute which prohibits them from advising any person or group to institute suits for the purpose of asserting what they believe to be their legal rights is a denial of the right of freedom of speech, and is unconstitutional and void.

[8] Section 1(b) not only violates the right of freedom of speech, but § 6 of the act exempts from its operation a host of potential litigants, and says in effect that what is a criminal act when done by unexcepted litigants, including the appellants, is not a criminal act when done by excepted litigants. There is no reasonable basis for excepting a great number of litigants from the application of the act while making it applicable to others. Thus it denies to the unexcepted litigants the equal protection of the laws.

Equal protection of the laws, guaranteed under the Fourteenth Amendment, does not preclude a State from resorting to classification for purposes of legislation, but such classification must be reasonable and not arbitrary, and rest on some ground of difference or distinction which bears a fair and substantial relation to the subject or object of legislation, so that all person similarly situated shall be treated alike. *C.I.T. Corp.* v. *Commonwealth*, 153 Va. 57, 68, 149 S.E. 523, 525, 526; *Bryce* v. *Gillespie*, 160 Va. 137, 143, 168 S.E. 653, 655.

For the reasons given, we hold:

(1) That chapter 33 is a valid regulation of the practice of law, enacted under the police power of the State, and is not violative of any constitutional restrictions;

(2) That the solicitation of legal business by the appellants, their officers, members, affiliates, voluntary workers and attorneys, as shown by the evidence, violates chapter 33 and the canons of legal ethics;

(3) That the attorneys who accept employment by appellants to represent litigants in suits solicited by the appellants, or those associated with them, are violating chapter 33 and the canons of legal ethics;

(4) That chapter 36 is unconstitutional and void because it violates the right of freedom of speech under both the State and Federal Constitutions, and denies due process of law and equal protection of the laws under the Fourteenth Amendment. Therefore,

(a) the appellants and those associated with them may not be prohibited from acquainting persons with what they believe to be their legal rights and advising them to assert their rights by commencing or further prosecuting a suit against the Commonwealth of Virginia, any department, agency or political subdivision thereof, or any person acting as an officer or employee of such, but in so advising persons to commence or further prosecute such suits the appellants, or those associated with them, shall not solicit legal business for their attorneys or any particular attorneys; and

(b) the appellants and those associated with them may not be prohibited from contributing money to persons to assist them in commencing or further prosecuting such suits, which have not been solicited by the appellants or those associated with them, and channeled by them to their attorneys or any other attorneys.

The decree appealed from is affirmed in part, reversed in part, and remanded for the entry of a decree consistent with the views expressed herein.

Affirmed in part; reversed in part; and remanded.

Senator JOHNSTON. Do you want to read it in?

Mr. LIPSCOMB. I can read it in.

Sitting last week in his country home in the Berkshire foothills, Thurgood Marshall, who argued the 1954 desegregation case before the Supreme Court, said: "We've negotiated too quietly and too reasonably for too long. We've made up our minds to harass the legal hell out of the school boards. From here on out, we're going to be unreasonable, undecent, and uneverything else."

That is the limit of the quotation.

Senator JOHNSTON. What are you quoting from now?

Mr. LIPSCOMB. This is quoted from Newsweek magazine, September 18, 1961. That is all, Mr. Chairman.

Senator KEATING. Is this—might I inquire whether this is offered as proof of the facts stated?

Senator JOHNSTON. This is offered as being printed in Newsweek of September 18, 1961, for whatever it is worth.

Senator HART. What's it worth. What's it worth, then, in light of the problem facing the committee?

Senator JOHNSTON. This is a very prominent magazine, and I think a lot of us read it, and I know I read it, and try to keep up with what's going on in the world, like a lot of other people do.

Senator KEATING. I might comment it is in line with some of the other legal antics which have taken place in these hearings.

Senator HART. Mr. Chairman, if this concludes the hearing——

Senator JOHNSTON. Yes; this concludes the hearing; is that right?

Senator HART. Amen and thank heaven, and let's not berate or review the chronology. Let's not belabor what some of us have felt, but let's be thankful the record is closed and it be understood as I have announced, and Senator Keating has announced and Senator Carroll, Senator Dodd, and Senator Long of Missouri have announced, we intend now promptly to move the favorable recommendation by the Committee of the Judiciary of this nomination.

Senator JOHNSTON. The subcommittee is going ahead, acting in its normal way, and we intend to meet immediately and to see what the subcommittee wants to do. That is the only thing we can do under the circumstances. But we do want this record printed.

Senator KEATING. Mr. Chairman, may I inquire whether there has been any other hearing which has been delayed for the printing of a record; any other subcommittee session?

Senator JOHNSTON. We have never had one exactly like this.

Senator KEATING. That I agree with.

Senator JOHNSTON. The Irving Ben Cooper record is being printed now. He is from New York, the one that you are opposing; isn't it?

Senator KEATING. No; I am not opposing it. I am a member of the subcommittee.

Senator JOHNSTON. What is your position in that case?

Senator KEATING. It is not being printed, so far as I know. The hearings have not—have been completed, but—is it being printed? There is no decision whatever of the subcommittee to wait until the hearings are printed. We passed on judges in the full committee time after time without waiting for that, and, I suppose, I am entirely in accord with the Senator from Michigan. I assume that our proper procedure will be, first, to discharge the subcommittee from further consideration unless they are prepared to report at the next hearing of the full committee.

Senator JOHNSTON. I would like to say that in the Irving Ben Cooper record there are five volumes of it now being printed, and that is being held up in the Judiciary Committee at the present time. I haven't too much about that, but at the same time——

Senator KEATING. It is not being held up in the Judiciary Committee, but in the subcommittee, because they have not been called together.

Senator JOHNSTON. Just like this is in the subcommittee; it is the same thing; I haven't heard much about that one, but there have been just as many hearings in this one as that one.

Senator KEATING. More. That was a nomination that was opposed. This one isn't opposed by anyone.

Senator HART. Mr. Chairman, the record in this case is comprised of leaves on the calendar and not testimony of witnesses, as is the case in the Judge Cooper matter. This is a very simple record and a very short one. As I say, it is just the inclusion of a number of months in between the chapters, and I think that the sooner this committee recommends favorably the nomination, and the sooner the Senate places on the bench Judge Marshall, the better, because America will be the stronger, and this committee will not suffer under the cloud it now suffers, and the Senate will have responded to the President's recommendation as it should, and as it will, and, as far as the technique goes, the Senator from New York, a motion to discharge the subcommittee. The key is the committee, the full committee.

Senator KEATING.That is right.

Senator HART. I think the full committee will work its will, and that will be my motion.

Senator JOHNSTON. I would like to say, too, I hold in my hand a letter here that was written to me from John A. Carroll, Thomas J. Dodd, Philip A. Hart, and Edward V. Long, making practically the same statement that they intend, as the probable taking that up before the full committee, but that is a matter for the full committee, not for this subcommittee to act on, as far as we are concerned, and as far as I am concerned. As long as I am chairman I shall proceed in the manner that I think is right and just, and do what I think is right

and just, and shall call the subcommittee together just as quickly as I can get them together to decide what to do and what reports to make to the full committee.

That is my duty as I see it, and I shall do that.

(The letter referred to follows:)

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
August 23, 1962.

Hon. JAMES O. EASTLAND,
Chairman, Senate Committee on the Judiciary,
Washington, D.C.

DEAR MR. CHAIRMAN: There is no need to trace chronologically the events following President Kennedy's nomination of Thurgood Marshall to the U.S. circuit court.

The delays have been intolerable. The hearings have been extended far longer than necessary. The full Committee on the Judiciary has a responsibility to insure that the Senate shall have a chance to pass on this nomination.

In view of these circumstances, we intend to move at the next committee meeting that the name of Thurgood Marshall be favorably reported.

While there is understandable reluctance to discharge the committee, we will nevertheless make this motion or support the leadership in such a motion if necessary.

The majority leader, Mr. Mansfield, and the assistant majority leader, Mr. Humphrey, have assured the Senate that it will have an opportunity to vote on the nomination. This is most heartening.

It is our hope, however, that the committee itself will report the name to the Senate.

Sincerely yours,

JOHN A. CARROLL.
THOMAS J. DODD.
PHILIP A. HART.
EDWARD V. LONG.

Senator JOHNSTON. I thank all the witnesses who came here this morning and testified, and appreciate your work that you did, Mr. Lipscomb.

He was assigned by the full committee down here. I don't think it was a question of me asking for anyone, but, as is usual, they use a member of the staff to do that kind of work. I want to thank you for the work you did, Mr. Lipscomb. I thank each one of you for keeping order here at all times, too.

Thank you again.

(Whereupon, at 11:25 a.m., the hearing was concluded.)

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